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Supreme Court of the United States

OCTOBER TERM.

No. 448

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, M. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Petitioners,

versus

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al,

Respondents.

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APPENDIX.

COMPLAINT FOR INJUNCTION

Come now the State of Florida, by and through Richard W. Ervin, as Attorney General of the State of Florida, Leroy Collins, as Governor of the State of Florida, Ray E. Green, as Comptroller of the State of Florida, J. Edwin Larson, as Treasurer of the State of Florida, Richard W. Ervin, as Attorney General of the State of Florida, and Nathan Mayo, as Commissioner of Agriculture of the State of Florida, composing the Trustees of the Internal Improvement Fund of the State of Florida, a component governmental agency of the State of Florida, hereinafter referred to as the Trustees of the Internal Improvement Fund; Leroy Collins, as Governor of the State of Florida, R. A. Gray, as Secretary of State of the State of Florida, Richard W. Ervin, as Attorney General of the State of Florida, Ray E. Green, as Comptroller of the State of Florida, J. Edwin Larson, as Treasurer of the State of Florida, Thomas D. Bailey, as Superintendent of Public Instruction of the State of Florida, and Nathan Mayo, as Commissioner of Agriculture of the State of Florida, constituting the State Board of Conservation of the State of Florida, a component governmental agency, hereinafter referred to as the State Board of Conservation; and Richard W. Ervin, as Attorney General of the State of Florida, in his official capacity as Attorney General of the State of Florida, and bring this their complaint for injunction against the Southern Scrap Metal Company and thereupon complaining respectfully show unto the court

1. The named officials composing the Trustees of the Internal Improvement Fund are duly elected and are now acting in their official capacities as Trustees of the Internal Improvement Fund.

2. The named officials of the State Board of Conservation are duly elected and are now acting in their official capacities as State Board of Conservation.

3. Richard W. Ervin is the duly elected and acting Attorney General of the State of Florida.

4. The Southern Scrap Metal Company is, to the best knowledge and belief of the Plaintiffs, located in New Orleans, Louisiana, with its principal office situated in New Orleans, Louisiana.

5. Except as to lands in Dade and Palm Beach Counties, the title to all sovereignty tidal water bottoms, including all islands, sand bars, shallow banks and small islands made by the process of dredging of the channel by the United States Government and similar or other islands, sand bars, and shallow banks located in the tidal waters of the State of Florida, is vested in the Trustees of the Internal Improvement Fund of the State of Florida (Section 253.12, Florida Statutes).

6. Title to all submerged sovereignty lands, not vested in the Trustees of the Internal Improvement Fund of the State of Florida, is vested in the State of Florida as a sovereign state.

7. The Trustees of the Internal Improvement Fund of the State of Florida are vested and charged with the administration, management, control, supervision, conservation and protection of all lands, including all tidal lands and all lands

covered by shallow waters of the ocean, gulf or bays or lagoons thereof, and products on, under, or growing out of, or connected with lands owned by the State of Florida, not vested in some other state agency (Section 253.03, Florida Statutes).

8. The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee river, thence down the middle of said river to its confluence with the Flint river; thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic Ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reef to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido river; thence to the place of beginning. (Article I, Florida Constitution.)

9. The Submerged Land Act (67 Stat. 29, 43 USC 1301 et seq.) defines the term "boundaries" of the respective states as: "the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the

Congress, or as extended or confirmed pursuant to section 1303 of this title but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;" (43 USC 1301(a)(3)(b)).

10. The boundaries of the State of Florida along the Atlantic Ocean and the Florida straits were re-defined in Chapter 29744, Laws of Florida, Acts of 1955 (Section 6.11 Florida Statutes); however, the boundaries along the Gulf Coast were not re-defined by said Chapter 29744.

11. The Trustees of the Internal Improvement Fund may police, protect, conserve, improve, prevent trespass, damage, or depredation upon the lands and the products thereof on or under the same and the said Trustees may place in their own name all suits for damages and suits in trespass which in the judgment of the said Trustees may be necessary to the full protection and conservation of the said lands, and State may join with the said Trustees in any action or suit in the name of the said State through the Attorney General. (Section 253.04, Florida Statutes.)

12. The Trespass upon state lands is prohibited (Section 821.19, Florida Statutes) and the word "trespass" as used in Section 821.19, Florida Statutes, shall be deemed to be used in its broadest and most liberal sense and shall include the cultivation, living upon, or any other use of such

lands or the use or removal of the soil of said land or anything except wild game in, on, or under such soil without written lease from the State and the term "state lands" as used in Section 821.19 and 821.20, Florida Statutes, which includes all state owned lands and lands owned by the Trustees of the Internal Improvement Fund (Section 821.20, Florida Statutes).

13. The Southern Scrap Metal Company has not obtained any lease or permit from the Trustees of the Internal Improvement Fund of the State of Florida, the State of Florida or any agency of the State of Florida authorizing the said Southern Scrap Metal Company to salvage, remove, or in any manner whatsoever interfere with the battleship "Massachusetts" which has been sunken and lies on the bottom of the Gulf of Mexico on the eastern tip of Caucaus Shoals, westward of the entrance of the Pensacola Bay in the Gulf of Mexico approximately one and one-half or two miles from the shore or mainland of Escambia County, Florida.

14. The Plaintiffs believe that the battleship "Massachusetts" which has been sunken and lies on the bottom of the Gulf of Mexico on the eastern tip of Caucaus Shoals, westward of the entrance of the Pensacola Bay in the Gulf of Mexico approximately one and one-half or two miles from the shore or mainland of Escambia County, Florida, is not owned by the United States or any of its agencies or departments and that the said battleship "Massachusetts" has been abandoned by the United States Government and

ownership of the said battleship "Massachusetts" is not claimed by the United States Government or any of its departments or agencies and neither the United States Government nor any of its agencies or departments claims any right, title or interest in the said battleship "Massachusetts".

15. The State Board of Conservation is charged with the duty to preserve, protect and manage the marine, crustacean, shell and anadromous fishing resources of the waters of the State of Florida. (Section 370.02, Florida Statutes.)

16. The Attorney General of the State of Florida is charged with the duty to conserve and protect all property rights of the sovereign State of Florida.

17. The Defendant, the Southern Scrap Metal Company, without obtaining permission from the State of Florida, any officer or agency of the State of Florida by written lease or otherwise, has undertaken to salvage and remove from its present location the battleship "Massachusetts", which has been sunken and is lying on the eastern tip of Caucaus Shoals westward of the entrance of Pensacola Bay and the Gulf of Mexico, off the mainland of Escambia County, Florida, and within the territorial boundaries of the State of Florida as defined in the Constitution of the State of Florida and the Submerged Land Act of the Congress of the United States.

18. The salvage operations of the Southern Scrap Metal Company upon the said battleship "Mas-

sachusetts" constitutes a trespass against and on the lands and waters of the State of Florida and the lands of the Trustees of the Internal Improvemen Fund of the State of Florida and the salvage and removal of the said battleship by the Southern Scrap Metal Company is interfering with, will interfere with, and permanently injure the marine life in the waters of the State of Florida to the detriment of the people of the State of Florida.

19. Fouling organism, small and large invertebrates, including many species of crustaceans, naturally attach to and are attached by any new and irregular object placed in shallow waters. In addition, many immature and adult species of fish naturally congregate around such objects, particularly if the objects are large, and such objects represent fine habitats of fish of many kinds which are attached directly by the shelter provided or indirectly by the aforementioned animals which serve as food. The removal of the said ship will therefore destroy the good fishing for sportsmen which sportsmen have heretofore enjoyed around the said ship.

20. That said ship lies upon the tidal water bottoms of the State of Florida and the Trustees of the Internal Improvement Fund of the State of Florida. That the State of Florida and said Trustees by virtue of their ownership and control of said lands have asserted and claimed all right, title and interest in and to said ship, and said defendants have no right, title or interest thereto empowering them to salvage, re-

move or interfere with said ship as she now lies whole or in part.

21. That the State of Florida and the Trustees of the Internal Improvement Fund of the State of Florida, do now and in the past have asserted and exercised jurisdiction, ownership and control over all wrecks, sunken ships, treasure trove and other properties lying on and within the tidal water bottoms of the State of Florida.

22. That should said defendants continue the trespass and be allowed to remove said sunken ship which has become an established landmark, habitat for fishes and a tourist attraction, irreparable damage and injury will result therefrom. The plaintiffs allege on information and belief that said defendants will unless restrained and enjoined by order of Court will continue said salvage operations to the detriment and damage of the State of Florida and its citizens.

WHEREUPON, Plaintiffs pray:

1. That upon a temporary hearing to be had herein, a temporary injunction or restraining order be issued enjoining and restraining the Defendants, their agents or servants or anyone acting on their behalf, from further trespassing upon the lands of the Plaintiffs and removing or attempting to remove from its present location the said battleship.

2. That upon final hearing such order be made permanent.

(S.) RICHARD W. ERVIN,
(Richard W. Ervin),
Attorney General.
(S.) RALPH M. McLANE,
(Ralph M. McLane),
Assistant Attorney General.
(S.) JOHN D. MORIARTY,
(John D. Moriarty),
Assistant Attorney General.
Attorneys for Plaintiffs.

AMENDMENT TO COMPLAINT.

Come now the Plaintiffs, by their undersigned attorneys, at the time of filing their complaint herein, and amend the same by adding thereto as a defendant herein, Massachusetts Company. That all allegations in said complaint relating to the defendant, Southern Scrap Metal Company, are alleged against said Defendant, Massachusetts Company, as though the same were re-alleged and set out verbatim in this amendment.

(S.) RICHARD W. ERVIN,
(Richard W. Ervin),
Attorney General,
(S.) RALPH M. McLANE,
(Ralph M. McLane),
Assistant Attorney General,
(S.) JOHN D. MORIARTY,
(John D. Moriarty),
Assistant Attorney General,
Attorneys for Plaintiffs.

NOTICE OF HEARING.

TO: SOUTHERN SCRAP METAL COMPANY, and MASSACHUSETTS COMPANY.

You will take notice that we will on Saturday, August 25th, 1956, at the hour of 1:00 P.M., apply to Honorable Harold Crosby, Circuit Judge, at his office in the courthouse Building, in the City of Pensacola, Escambia County, Florida, for a temporary order enjoining and restraining you and each of you, your agents or servants or any other person acting on your behalf, from removing, attempting to remove or interfering with the sunken Battleship Massachusetts, lying upon the tidal water bottoms of the State of Florida, off the coastline of Escambia County, Florida, in the Gulf of Mexico.

(S.) RALPH M. McLANE,
(Ralph M. McLane),
Assistant Attorney General,

(S.) JOHN D. MORIARTY,
(John D. Moriarty),
Assistant Attorney General,
Attorneys for Plaintiff.

MOTION TO DISMISS.

Come now the defendants and move the Court to dismiss the complaint heretofore filed herein on the following several grounds:

1. That the Court is without jurisdiction.

2. That the complaint fails to state a claim upon which relief can be granted.

3. That the complaint fails to state a cause of action.

4. That there is no equity in the complaint.

5. That the plaintiffs do not come into equity with clean hands.

6. That it affirmatively appears that the plaintiffs are guilty of laches.

7. That the allegations of the complaint affirmatively show that the rights of the defendants are paramount to those of the plaintiffs.

(S.) R. H. MERRITT,
(R. H. Merritt),

101 Lawyers Building,
314 South Baylen Street,
Pensacola, Florida.

JONES AND HARRELL,
By (S.) JOE J. HARRELL,
(Joe J. Harrell),
Attorneys for Defendants.

Florida National Bank Bldg.,
Pensacola, Florida.

ORDER DENYING MOTION TO DISMISS.

This cause coming on to be heard upon the defendants' motion to dismiss the complaint herein, and the court having heard the argument of Counsel for the respective parties, and being advised of its opinion, it is:

ORDERED, ADJUDGED AND DECREED that said motion to dismiss by and the same is hereby denied.

DONE and ORDERED in Chambers in the City of Pensacola, Escambia County, Florida, this 25th day of August, 1956.

(S.) H. B. CROSBY,
Circuit Judge.

ORDER GRANTING TEMPORARY INJUNCTION.

This cause coming on to be heard upon application of the Plaintiffs for a temporary injunction and the Court having heard the testimony, the argument of counsel for the respective parties, and being advised of its opinion, it is:

ORDERED, ADJUDGED and DECREED that the Massachusetts Company, a joint venture composed of Southern Scrap Material Company, Ltd., M. D. Friedman Company, a corporation, and Eastern Scrap and Salvage Company, a corporation, and each of them, their agents, servants, employees or any other person acting for or on behalf of any and all of said parties, be and they are hereby enjoined and re-

strained from removing, or attempting to remove from its present location, the wrecked and sunken battleship "Massachusetts," or any part or parts or appurtenances thereto, lying upon the tidal water bottoms of the State of Florida, off the coast of Escambia County, Florida, in the Gulf of Mexico, until further order of this Court.

FURTHER ORDERED, ADJUDGED and DECREED that the Defendants be and they are hereby permitted to take such steps as may be necessary to protect themselves from loss under the indemnity bond posted with the United States Corps of Engineers, provided, in so doing, they shall not in anywise disturb or remove the wrecked battleship "Massachusetts," any portion thereof, or appurtenances thereto.

FURTHER ORDERED, ADJUDGED and DECREED that this cause come on for final hearing on August 29, 1956, at the hour of 10:00 o'clock A. M.

DONE AND ORDERED in Chambers in the City of Pensacola, Escambia County, Florida, this 25th day of August, 1956.

(S.) H. B. CROSBY,
Circuit Judge.

ANSWER & DEFENSES.

Come now the defendants and for Answer to the Complaint heretofore filed herein, say:

FIRST DEFENSE.

That the Court is without jurisdiction.

SECOND DEFENSE.

There is no equity in the Complaint.

THIRD DEFENSE.

That the State does not come into equity with clean hands.

FOURTH DEFENSE.

That the State [is guilty of laches in that it] has stood by for some thirty years and asserted no claim whatsoever to said vessel "MASSACHUSETTS", and knew or should have known that for a number of years salvage operations have taken place aboard the vessel. In addition thereto, plaintiffs stood by, acquiesced, did nothing, raised no objection whatsoever, asserted no right or claim in opposition to the claim of the defendants, and the State acquiesced and allowed the defendants to expend large sums of money in connection with its salvage operation and to spend a great deal of time, effort and labor in connection therewith; and plaintiffs further allowed the defendants to obligate themselves to spend large sums of money in the future in connection with said salvage operation.

FIFTH DEFENSE.

That the State is estopped to assert any right, title or interest in and to said vessel because of laches.

SIXTH DEFENSE.

That the bill fails to state a cause of action.

SEVENTH DEFENSE.

That the equities in this cause are with the defendants and against the plaintiffs.

EIGHTH DEFENSE.

And answering the Complaint heretofore filed, the defendants further say:

1. The defendants admit the allegations of paragraphs 1, 2 and 3 of the Complaint.

2. The defendants allege that they have furnished the plaintiffs with the correct names of all of the parties defendant to this cause.

3. The defendants admit that paragraph 5 of the Complaint alleges a law of the State of Florida, but deny that Section 253.12 is applicable in this case.

4. The defendants deny the allegations of paragraph 6.

5. The defendants admit that Section 253.03, Florida Statutes, is the law of Florida, but deny that it is applicable in this cause.

6. The defendants admit that paragraph 8 alleges the boundaries of the State of Florida as set out in Article I, Florida Constitution.

7. Defendants admit that the Submerged Land Act as alleged in paragraph 9 of the Complaint is as partially quoted, but they further deny that it is material to the issue of the ownership of the subject matter of this suit or that by said Act the State of Florida was vested with ownership of the property or land involved in this suit.

8. Defendants admit the allegations of paragraph 10 of the Complaint.

9. Defendants admit the allegations of paragraph 11 insofar as it quotes Section 253.04, Florida Statutes, but deny that said statute is broad enough or intended to cover the lands and the property thereon which are the subject matter of this suit.

10. The defendants admit that Section 821.20, Florida Statutes, is the law of Florida and admit that as alleged in paragraph 12 it is true, but further allege that said law is not applicable in this cause and that said law refers specifically and expressly to lands within the physical limits of the State of Florida and not to the navigable waters one and one-half or two miles in the Gulf of Mexico.

11. Defendants admit the allegations of paragraph 13 of the Complaint, but affirmatively allege that the defendants have obtained quit-claim abandonment from the United States Navy and that the United States Navy is a branch of the United States Govern-

ment, from the United States Corps of Engineers and that said Corps is a branch of the United States Government, and from the United States Coast Guard, a branch of the United States Government; and that further, the defendants affirmatively allege that they have made and posted a $25,000.00 bond with the United States Corps of Engineers to indemnify the general public from any damage or hazard to navigation, and further allege that they have taken and retained possession of the vessel "MASSACHUSETTS" and properly marked off the area in accordance with the prescribed rules of the United States Coast Guard and of the United States Corps of Engineers and under their direction.

12. Defendants admit the allegations of paragraph 14 of the Complaint.

13. The defendants admit that Section 370.02, Florida Statutes, is the law of Florida but deny that said section charges the State Board of Conservation with the duty to preserve, protect and manage fishing resources, but allege that it charges them with this duty concerning fisheries, and that this section of the law is not applicable to this cause of action.

14. The defendants admit that the Attorney General is charged with the duty to protect certain of the property rights of the State of Florida, but deny that it is the duty of the Attorney General to assert property rights claimed by the State in opposition to property rights of individuals whose rights the Attorney General is duty bound to protect.

15. That the defendants admit so much of paragraph 17 of the Complaint that alleges that they have undertaken certain operations in connection with the vessel, "MASSACHUSETTS", but deny that said vessel is within the territorial boundaries of the State of Florida as defined in the Constitution and the Submerged Land Act of the Congress of the United States, and demand strict proof thereof.

16. The defendants deny that the operations as alleged constitute any trespass against the lands and waters of the State of Florida, the Trustees of the Internal Improvement Fund of the State of Florida, or any other sovereign body or person, and deny that the defendants are interfering with or will interfere with the marine life in the waters of the State of Florida to the detriment of the people of the State of Florida.

17. The defendants deny the allegations of paragraph 19 of the Complaint insofar as said allegations claim destruction of fishing in and around said vessel, but on the contrary, affirmatively allege that the operation of the defendants will, in fact, improve the attraction to fish and the area as a fishing attraction.

18. The defendants deny each and every allegation of paragraph 20 of the Complaint and specifically allege that there has been no assertion or claim of right, title or interest by the State of Florida, or any of its branches in and to said vessel prior to the filing of this suit; and further, the defendants allege that they have good right to salvage and remove the said vessel.

19. The defendants deny each and every allegation of paragraph 21 of the Complaint and further allege that any assertion and exercise of jurisdiction, ownership or control over wrecks, sunken ships and other properties as alleged, is without lawful authority and contrary to law.

20. As to the allegations of paragraph 22 of the Complaint, defendants deny any trespass and deny that the operation begun and contemplated by the defendants will destroy any landmark, habitat for fishes and tourist attraction, and further deny that such operation will cause irreparable damage and injury. The defendants further allege that their operation will result in no detriment and damage to the State of Florida and its citizens.

21. That by way of affirmative answer, the defendants say that the completion of the operation will result in an improved fishing area, an increase in the lure to fishes and that no disturbance will be resulting to the landmark or historical attraction.

WHEREFORE, the defendants pray that the Complaint be dismissed at the cost of the plaintiffs.

JONES AND HARRELL,
By (S.) JOE J. HARRELL,
(Joe J. Harrell),
And
(S.) R. H. MERRITT,
(Richard H. Merritt),
Attorneys for Defendants.

MOTION FOR INTERVENTION.

COMES NOW the Pensacola Sports Association, a non-profit Florida corporation, and the Pensacola Anglers and Hunters Club, a non-profit Florida corporation, through their attorney, J. B. Hopkins, and respectfully move that this Honorable Court permit them to intervene as plaintiffs in connection with the above cause under Rule 3.4 of the Florida Rules of Civil Procedure, and allege as follows:

1. That the applicants herein for intervention are each non-profit corporations in Florida, the Pensacola Sports Association having a membership in excess of 200 and the Pensacola Anglers and Hunters Club having a membership in excess of 500, with each having its principal location in Pensacola, Escambia County, Florida, and each having its membership composed of citizens and residents of Escambia County, Florida.

2. That each of the applicants have a great interest in the litigation pending in this cause and have numerous questions of law and fact in common.

3. That the said intervention will not delay or prejudice the adjudication of the rights of the original parties to said action and the applicants will abide by the pleadings in this cause.

4. That because of the activities of the members of the applicant corporations, the outcome of this cause is of great moment to them.

WHEREFORE, your petitioners pray that they may be made party plaintiffs in said cause for the purpose of protecting their rights and because of their interest.

(S.) J. B. HOPKINS,
(J. B. Hopkins),
Attorney for Petitioners.

314 South Baylen Street,
Pensacola, Florida.

MOTION TO STRIKE.

Come now the plaintiffs and move the Court to strike defendants' "Fourth Defense" and paragraph 14 of defendants' "Eighth Defense" and for grounds of said motion say:

1. That the same are insufficient as a defense.

2. That the same are immaterial to the issues in this cause.

(S.) RICHARD W. ERVIN,
(Richard W. Ervin),
Attorney General,
(S.) RALPH M. McLANE,
(Ralph M. McLane),
Assistant Attorney General,
(S.) JOHN D. MORIARTY,
(John D. Moriarty),
Assistant Attorney General,
Attorneys for Plaintiffs.

AMENDMENT TO COMPLAINT.

Come now the Plaintiffs, by their undersigned counsel, and after leave of court first had and obtained, amend their complaint as follows:

By making as party defendants the Massachusetts Company, a joint venture composed of Southern Scrap Material Company, a joint venture composed of Southern Scrap Material Company, Ltd., M. F. Friedman Company, a corporation, and Eastern Scrap and Salvage Company, a corporation.

In Paragraph 17 of the Complaint filed herein, Line 6 thereof and after the word "sunken" insert "upon the bottoms since the year 1922 or 1923."

(S.) RICHARD W. ERVIN,
(Richard W. Ervin),
Attorney General,
(S.) RALPH M. McLANE,
(Ralph M. McLane),
Assistant Attorney General,
(S.) JOHN D. MORIARTY,
(John D. Moriarty),
Assistant Attorney General,
Attorneys for Plaintiffs.

ORDER OF INTERVENTION OF PLAINTIFFS.

THIS CAUSE coming on this date to be heard upon the motion of the Pensacola Sports Association and the Pensacola Anglers and Hunters Club to intervene as plaintiffs in the above cause, and the Court having heard the matter and being advised in the premises,

and being further advised that the parties in the cause have all received due notice of this motion, it is, therefore,

ORDERED, ADJUDGED AND DECREED:

1. That the Pensacola Sports Association and the Pensacola Anglers and Hunters Club be and they are hereby authorized to intervene as plaintiffs in the above action as authorized by Rule 3.4 of the Florida Rules of Civil Procedure, and to abide by the pleadings in this cause.

2. That this cause shall proceed hence without delay with the addition of the Pensacola Sports Association and the Pensacola Anglers and Hunters Club as plaintiffs.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida, this 29th day of August, 1956.

(S.) H. B. CROSBY,
Judge.

FINAL DECREE.

The original plaintiffs in this suit are the State of Florida, the Trustees of the Internal Improvement Fund of the State of Florida, the State Board of Conservation of the State of Florida, and the Attorney General of the State of Florida. Upon their petition for intervention, the court has also permitted to be joined as parties plaintiff the Pensacola Sports As-

sociation and the Pensacola Anglers and Hunters Club, both non-profit corporations interested in sport fishing.

The defendant is the Massachusetts Company, a joint venture composed of Southern Scrap Material Company, Ltd., M. D. Friedman Company a corporation, and Eastern Scrap and Salvage Company, a corporation.

There is no dispute that the court has jurisdiction of the parties and of the subject matter of this suit.

Plaintiffs seek to enjoin the defendant from trespassing upon the lands of the plaintiffs and from removing or attempting to remove from its present location the battleship *Massachusetts* (or what remains of it), which lies sunken in the Gulf of Mexico off the coast of Escambia County in territorial waters of the State of Florida. In order to preserve the subject matter of the suit intact until a final disposition could be made, the court has heretofore issued a temporary injunction against continued operations of the defendant except such as might be necessary to comply with the requirements of a bond posted by the defendant with the United States Corps of Engineers to indemnify against its creation of a hazard to navigation in its work on the sunken ship.

This suit involves questions of law that have in greater part not been presented or settled in this state. Counsel on both sides have made an able presentation of the evidence and have, at the request of the court, submitted thorough briefs of the law that have been most helpful. They are to be commended for their diligence.

Briefly, the facts before the court are these:

The United States battleship *Massachusetts*, after first being used for coast artillery target practice, was scuttled and sunk in the Gulf of Mexico, approximately 1.2 miles off the entrance to Pensacola Bay, Escambia County, Florida, in the year 1922. It has remained there ever since, largely undisturbed except by action of wind and water, which have gradually caused it to sink deeper and deeper into the sand bottom. A portion of the gun turrets is still visible above the surface of the water. The sunken battleship is in such condition that it could not be restored to use as a vessel. It is, however, a haven for small marine life and therefore attracts larger fish that feed upon such organisms. This, in turn, has made the site where the vessel lies a favorite fishing spot, so that it has over the years attracted and still does attract large numbers of anglers from the local community and from distant places. During the past few years, at least, relatively small parts of the ship's brass and fittings have from time to time been removed by individuals not parties to this suit.

There have been efforts to organize the salvage of the sunken ship at times in the past, but all proved abortive until the venture in which the defendant is now engaged. In the month of August, 1956, the defendant, after preparations extending over the last year or two and involving the outlay of several thousand dollars in expense, secured a navigational permit from the United States Corps of Engineers and commenced salvaging the battleship. Incident to the beginning of this work, the defendant took possession of the ship by marking it with buoys and lines. Within a few days thereafter this suit was filed and, after

notice and hearing, the temporary injunction issued.

The evidence at final hearing shows that the former owner of the battleship, the United States, has left it undisturbed for many years, and the court finds that it was abandoned many years before this suit was begun. A telegram from the Secretary of the Navy, admitted in evidence, announces such abandonment, although it does not state the date of abandonment.

Upon the basis of the evidence, the court finds and will treat the *Massachusetts* as an abandoned, sunken wreck of a ship lying in navigable waters of the Gulf of Mexico within the territorial limits of the State of Florida, subject to the laws of the State of Florida and the jurisdiction of this court, and in the possession of the defendant.

At the outset, it should be stated that the court finds no grounds upon which to enjoin the alleged trespass that exists independently of the right of property in the sunken battleship.

Three primary questions are raised by this proceeding:

1. Does the State of Florida, by reason of its ownership or control of the bottom lands upon which the *Massachusetts* lies, have a title to the wrecked ship superior to that of the defendant?

2. Does the law of Florida prohibit the taking or salvaging of the wrecked ship by the defendant?

3. Has the long continued use of the site of the wrecked ship by the public for fishing created a prescriptive right that debars the defendant from disturbing it?

After careful consideration of the briefs submitted by the parties and a search of the available authorities, the court is impelled to the conclusion that each of these questions must be answered in the negative and the plaintiffs' prayer for a permanent injunction denied.

Upon the first question, plaintiffs contend that the State of Florida owns the bottom land upon which the wrecked ship is resting and that title to personal property abandoned upon lands owned by the state is vested in the state. Under the plaintiffs' theory, the defendant is a trespasser upon state property and, as a trespasser, cannot by taking possession of the abandoned hulk gain any rights in it as against the state. Plaintiffs cite two cases in support of this theory, Barker v. Bates (Mass. 1832), 13 Pickering 255, 23 Am. Dec. 678, 682; and Mitchell v. Oklahoma Cotton Growers' Association, 108 Okla. 200, 235 Pac. 597. Neither of these cases, however, involved a wrecked vessel abandoned in navigable waters. The Barker case dealt with a stick of timber thrown up on the shore, and the Mitchell case was concerned with cotton lodged upon property of the plaintiff during a flood. There is substantial authority that even in this situation the finder of lost property would have priority over the owner of the realty on which it was found, Bridges v. Hawkesworth, 21 L.J. (G.B.) 75; Hamaker v. Blanchard, 90 Pa. 377, 35 Am. Rep. 664, the rule recited in many cases being that the finder of lost property is entitled to it as against all the world except the true owner, regardless of where it is found. In no case has the court found any decision holding that a wrecked ship lying in navigable waters becomes the property of the owner of the bottom land, whether that owner be the sovereign or a pri-

vate individual. All of the cases on the subject found by the court hold that a wrecked ship, abandoned in navigable waters, has no owner and belongs to the salvor. See, for example, In re Highland Nav. Corp. (D.C.N.Y. 1928), 24 F.2d 582, aff'd (C.C.A.) Pet. of Highland Nav. Corp., 29 F. 2d 37; and Thompson v. U. S. (1929), 62 Ct. Cl. 516. In the absence of a statute on the subject, the authorities appear, therefore, to support the view that the wrecked ship would become the property of the first person or party reducing it to possession. See Howard v. Sharlin (Fla. 1953), 61 So. 2d 181.

Upon the second question, plaintiffs urge that two early English statutes establish the state's title to the abandoned property involved in this suit, the statue of 3 Edward I, chapter 4, which reads:

> "Concerning Wrecks of the Sea, it is agreed, that where a Man, a Dog, or a Cat escape quick out of the Ship, that such Ship nor Barge, nor any Thing within them, shall be adjudged Wreck: (2) but the goods shall be saved and kept by View of the Sheriff, Coroner, or the King's Bailiff, and delivered into the Hands of such as are of the Crown, where the Goods were found; (3) so that if any sue for those Goods, and after prove that they were his, or perished in his keeping, within a Year and a Day, they shall be restored to him without Delay; and if not, they shall remain to the King, and be seized by the Sheriffs, Coroners, and Bailiffs, and shall be delivered to them of the Town, which shall answer before the Justices of the Wreck belonging to the King."

and the statute of 17 Edward II, chapter II, which provided:

> "Also the King shall have Wreck of the Sea throughout the Realm, (2) Whales and great Sturgeons taken in the Sea or elsewhere within the Realm, (3) except in certain Places privileged by the King."

The term "wreck of the sea" as used in those statutes did not, however, refer to a wrecked ship but to wrecked goods. Nor does the term as used in the statutes include even goods if they are lying at the bottom of the sea. Hale, in *De Jure Maris*, at page 37, defines "wreck" in the context of these statutes as follows:

> "The kinds of it are two: *First*, such as is called properly so, the goods cast upon the land or shore; *second*, improper, for goods that are a kind of sea waifs or stray; flotsam, jetsam and ligan."

The hulk *Massachusetts* fits into none of these categories.

As against the plaintiffs' contention that Sections 705.01-705.03, Florida Statutes 1955 (providing for the sale by the sheriff of "wrecked derelict goods, abandoned motor vehicle or other personal property" found in any county, with a portion of the proceeds to be paid to the salvor, a portion to the sheriff and county judge for their fees, and the balance to be paid into the state treasury unless claimed within a year and a day) constitutes recognition by the Flor-

ida legislature of the English statutes cited above, the defendant argues that more nearly applicable is Section 715.01, Florida Statutes 1955 (providing that title to "all personal property found in or upon public conveyances, premises at the time used for business purposes, parks, places of amusement, public recreation areas and other places open to the public is hereby vested in the finder unless the same be called for or claimed by the rightful owner thereof within six months after the finding . . ."). The court recognizes the apparent conflict between these statutes so far as they may apply to the present case. In such a situation the latest expression of the legislative will would normally be controlling and the later statute (Section 715.01, enacted in 1947, as against Sections 705.01—705.03, last amended in 1943) would be given effect. The court doubts that the legislature had in mind the particular problem presented in the present case when either of these statutes was enacted. It seems clear that Section 705.01—705.03 cannot be regarded as overturning the settled rule of law that a wrecked ship abandoned in navigable waters becomes the property of the first taker.

Concerning the third question, it is argued that the long continued use of the site of the abandoned ship by members of the public as a fishing spot has established a prescriptive right that precludes the defendant from disturbing or removing the hulk. Unfortunately, the plaintiffs and the court have been unable to find any authority that would support this view; and the fact is that any member of the public has a right to travel in or upon navigable waters so long as he does not violate the maritime law. Nowhere has the court found the exercise of this right ad-

vanced as a basis for prohibiting the enterprise upon which the defendant is embarked.

In this proceeding the burden is upon the plaintiffs to establish their right to the injunctive relief sought. Upon a careful consideration of the evidence and the applicable law, the court cannot find that the plaintiffs have met this burden. While the court recognizes the interest that members of the public, particularly those who enjoy fishing, feel in this matter, this court is under a duty to protect individual rights as well as those of the state and the general public. In the absence of a valid legislative enactment, none of these parties should be deprived of a previously existing right at the caprice of a court of justice.

It is thereupon

ORDERED, ADJUDGED, AND DECREED that the temporary injunction heretofore issued in this cause be, and it is hereby, dissolved; and that the complaint be, and it is hereby, dismissed at the cost of the plaintiffs.

DONE AND ORDERED at Pensacola, Florida, this 8th day of September, 1956.

(S.) H. B. CROSBY,
Circuit Judge.

EXCERPTS FROM TRANSCRIPT OF TESTIMONY:

VAN H. FERGUSON, a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. McLANE:

Q. Please state your name,

A. Van H. Ferguson.

Q. Mr. Ferguson, by whom are you employed?

A. By the State of Florida, Commissioner of Agriculture and Trustees of the Intefnal Improvement Fund.

Q. Do you hold an official position with the State of Florida?

A. State Land Agent.

Q. Please describe your duties as State Land Agent.

A. The State Land Agent is custodian of all the original land records of the State, sovereignty land, swamp and overflow land, records of Internal Improvement lands, submerged lands within the tidal waters of the State of Florida. We are salesmen for the State of Florida for such lands as are offered for sale. We maintain records of all leases, sales, acquisitions and dispositions of land by lease, conveyance, etc.

Q. Are those records under your direct supervision?

A. They are.

Q. Did you at the request of the Attorney General's Office make a search of your records for permits or licenses in connection with the salvaging of ships or digging for treasure and the like?

A. I did.

Q. I hand you herewith a file which I believe was handed by your office to our office. Is that correct?

A. It is.

Q. Just look at that file a moment. Are you familiar with those files?

A. I am.

Q. Will you from those files, taking one at a time, advise this Court as to the nature of the particular file insofar as land matters under the supervision of the Trustees of the Internal Improvement Fund of the State of Florida are concerned.

MR. HARRELL:

We object, I can see where that would have no materiality.

COURT:

What is your purpose, Mr. McLane?

MR. McLANE:

We are leading up to this: We expect to show that the Trustees over a period of years have established a policy, rule and regulation of granting licenses to dig in territorial waters, salvage vessels, etc., with the idea that where an administrative agency by rule, regulation or policy has established a course of conduct, then unless it is against the public policy of the State or against the organic law or statute it has the effect of law.

COURT:

I think the pleadings admit that no license or lease has been obtained. The question is whether the

state owns the property. I don't think any administrative policy will pertain to the question.

MR. McLANE:
I understand that question was by what authority the State of Florida may issue a license.

COURT:
No, the question before the Court is whether or not the State of Florida owns this property or has such jurisdiction over the property as to give it the right to prevent a prospective party from salvaging the property.

MR. McLANE:
The position taken by the defendants is that the State of Florida does not have authority to issue a license. How can we combat that?

COURT:
If you can show the Court how the State has that authority by statute, common law, etc., we will consider this evidence.

MR. McLANE:
I would like to be heard now. Under Section 253.03, Florida Statutes, "The Trustees of the Internal Improvement Fund of the State of Florida are vested and charged with the administration, management, control and protection of all lands and products on, under, or growing out of or connected with lands owned by, or which may hereafter inure to, the state, not vested in some other state agency. Such lands shall be deemed to be all swamp and overflowed lands held by the state, or which may hereafter in-

ure to said state; all lands owned by the state in its sovereignty," which is the situation here as we see it, "all internal improvement lands proper; all tidal lands; all lands covered by shallow waters of the ocean, gulf, or bays or lagoons thereof, and all lands owned by the state covered by fresh water; all parks, reservations, or lands set aside in the name of the state not under the supervision and control of some other agency of said state, or of the United States or other governmental agency; all lands which have accrued to the state from any source whatsoever unless and until vested in some other state agency." Then the statute provided for trespassing upon state lands, which is 821.19. I can't quote it to you but the effect of it is this: That trespass upon state lands is prohibited, and the word "trespass" as used in 821.19, Florida Statutes, "shall be deemed to be used in its broadest and most liberal sense and shall include the cultivation, living upon, or any other use of such lands, or the removal of anything growing thereon, or the use or removal of the soil of said land, or anything except wild game in, on, or under such soil without written lease from the state. The term "state lands" as used in 821.19 and 821.20 includes all state owned lands, lands vested in the State Board of Education and the Trustees of the Internal Improvement Fund." Those two statutes, with this testimony which we proffer to the Court, will show that the Trustees of the Internal Improvement Fund have followed this pattern of issuing licenses, leases, or permits to explore for treasure within the tidal waters and to explore wrecks in the State of Florida.

MR. HARRELL:

We have plead that we haven't applied for nor received a license. It is certainly a matter of law. This man gives a mode of his operation, which I think is not material.

COURT:

The Court will sustain the objection without prejudice to his right to offer it again if it becomes material.

MR. McLANE:

That is in connection with our proffer of this testimony?

COURT:

The Court denies the proffer.

THEREUPON, THE WITNESS WAS EXCUSED.

ROBERT M. ENGLE, a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. McLANE:

Q. Please state your name.

A. Robert M. Engle.

Q. Mr. Engle, by whom are you employed?

A. By the State Board of Conservation.

Q. In what capacity are you employed by the State Board of Conservation?

A. Assistant Director.

Q. In other words, you are the number two man in the State Board of Conservation?

A. Yes, sir.

Q. Generally, what does the State Board of Conservation do?

MR. HARRELL:

Objection on the same grounds. It is certainly not material to the issue what the State Board of Conservation does at this time.

COURT:

I believe the State Board of Conservation is a party to the plaintiffs?

MR. McLANE:

Yes, sir.

COURT:

The objection is overruled.

A. We enforce all laws concerning conservation and do such other things as we feel are to the benefit of salt water resources, such as sponsoring research and offering impartial testimony in such cases as this.

MR. HARRELL:

We object. His duties are clearly set out in the statute.

COURT:

The question was not what his duties are but what do they do. The objection is overruled.

Q. The jurisdiction of the State Board of Conservation extends over salt water fisheries?

A. Yes, sir.

MR. HARRELL:

Objection. That calls for a conclusion.

COURT:

The Court will take judicial notice of the absence of statute. The objection is overruled.

MR. McLANE:

I could pull out the statutes. I am trying to save time.

Q. Mr. Engle, what is your education?

A. Biologist, studied at the University of Illinois, University of Minnesota, and University of Miami.

Q. What degrees do you have?

A. Bachelor of Science and Master of Science.

Q. From what college did you receive a Bachelor of Science degree?

A. University of Illinois.

Q. What about the Master of Science degree?

A. University of Miami.

Q. Have you made any specialty in connection with fisheries?

A. Yes, sir. I consider myself a marine biologist.

Q. What do you consider a marine biologist is?

A. A man who studies and is cognizant of the chemistry and biological function of salt water, including the animals and plants that dwell therein.

Q. How much experience have you had in marine biology?

A. About 10 years.

Q. Do I understand that your entire training has been directed toward marine biology?

A. Not entirely. That is a specialty which you pursue after you take ordinary disciplines at the undergraduate level.

Q. In connection with marine biology do you make studies of the habits of fishes, their locale and general movements, etc.?

A. Yes, sir,

Q. Is that part of your job?

A. Yes, sir.

Q. Have you had occasion to observe fish in the salt waters of the State of Florida in the last year in connection with their movements or their congregation in the area of a sunken ship or object?

A. Yes, sir.

Q. Just state what your observation has been.

MR. HARRELL:

That is a very general statement. I think the proper way would be to put a hypothetical to him as an expert.

COURT:

We will permit him to answer and the Court will reserve ruling.

Q. I will rephrase the question. Assuming that a former battleship of the United States Navy is sunken in the Gulf of Mexico approximately 1½ miles offshore since the year 1922 or 1923. Will you state what in your opinion the effect of the location of that ship would be upon marine life in that vicinity.

A. The object would first become colonized by what we term fouling organisms—barnacles, some

species of crustaceans, lobsters, shrimp and crabs. These in turn would attract certain larger fishes which would feed upon them and make that their habitat. The fauna and flora have been studied and in most cases in Florida are quite distinctive as to different types of habitat, some perhaps a little more than others.

Q. Please explain what you mean by "a little more" as you refer to the habitat.

A. The types of fishes which would be attracted by such an object would be certain species.

Q. Would you specify some of those?

A. The groupers, certain species of snappers, certain species of grunts, rock fish—to name a few for you.

Q. Does that complete your statement on this?

A. Yes, sir.

Q. Assuming that this same ship which had been on the bottom since 1922 or 1923 was blasted through an explosive process, what effect, if any, would that operation have upon the normal habitat of the fishes in that area?

A. It would be determined by the amount of demolition, how far the particles were thrown, how small the particles were at the termination of the explosion, and how well they retained their integrity.

Q. Assuming that this is a sunken battleship with armor plate thereon and such force was used to blast the armor plate therefrom or to demolish the ship itself, would you state—

MR. MERRITT:

We object to that hypothetical question unless it is shown that the witness understands the method to be used in the separation of the armor plate from the

balance of the construction of the vessel. Blasting might mean blowing the whole thing up or might mean a specialized separation process which would determine the degree of fragmentation of explosion.

COURT:

The question contemplates facts that are not clear before the Court. The objection will be sustained.

Q. You stated that it would depend on the type of explosive used and the amount of explosive?

A. The amount of demolition, the amount of damage done to the hull of the ship.

Q. Assuming that armor plate from this ship had been recently removed, what if any effect would such removal have on the normal habitats of the fishes?

MR. MERRITT:

We object unless the expert is given the benefit of the method of the removal of the armor plate and the effect that the removal of the armor plate would have on the residue of the structure of the vessel, and the amount of detonation accompanying the separation of the armor plate.

MR. McLANE:

I hope the question is properly framed. I am asking him, assuming that the plates had been removed and the vessel is lying on the bottom. I was trying to determine the effect that, if the plates have been removed what effect that will have.

MR. MERRITT:

The position that we take is first, of course, he is assuming evidence, that is, that the plates are off.

Next he must show that they were taken off. For aught that his question shows it might have been by direct blast or separating process, by indirect blast, or by a pressure separation, or it might have been by uncoupling. There is no evidence in the record to indicate to this expert how any armor plate was separated if there was any such separation. Without that, I don't see how the expert—

COURT:

The Court doesn't understand the question to involve the manner of the removal but the fact that the removal exists. On that basis the objection will be overruled and the witness will be permitted to answer the question.

A. If by plates he means sections of the sides of the ship, I would think that that would help to reduce the fish population because the surface area that would help support organisms on which fish feed would be reduced. If the armor plate is underlaid by other metal and the under lay is not idsturbed, then it would be re-colonized. But if the plates were left on the bottom after being removed, that would attract fish. If they were removed from the entire environment that would reduce the supply of fish by reducing the supply of organisms on which the fish feed.

Q. I understand that you are telling us that organisms are attached to the side or plates of the ship; that when you remove those organisms, you remove the small fish, and that would certainly have an effect on the other fish.

MR. HARRELL:

Objection to revising of the question.

COURT:
The objection is sustained.

A. All animals follow a food chain, beginning with the smaller organisms. These are preyed upon by larger ones, usually, and so on up the line. The chain starts with an obstruction within the water on which the smaller organisms can cling. There are other chains, but that is one. As you increase the amount of space available to these small organisms so that they can colonize, you start the food chain that leads up to the larger organisms having more food available and therefore managing to be more abundant. In other words, if you start out with a lot of food for the smaller fishes there will be more smaller fishes and the next stage which feed upon them will be able to thrive more. There will be more attractions up the line until you get more of the quite large fish such as snapper and grouper.

Q. In the earlier part of your testimony, Mr. Engle, did you not testify that such fish as grouper, snapper and one or two others that I don't recall, normally would form a habitat around this wreck or any object in the waters in the Gulf of Mexico?

A. They would be attracted to it and would establish a certain population around it which would be much greater than the population of the same fishes on open bottom where there was no obstruction.

Q. Are the type of fish mentioned in your testimony considered sport fish or edible fish?

A. All that I mentioned are considered both.

CROSS EXAMINATION.

BY MR. HARRELL:

Q. Mr. Engle, it is true that if you sank a whole fleet of battleships out there you would be much better off insofar as fishing is concerned, is it not?

A. I think so; yes.

Q. What effect on fishing would a sand bottom have? If we assume that the Massachusetts is lying on a sand bottom, would that effect the kinds of fish that congregate there?

A. I think that all habitats are different and a lot of things enter into whether or not they congregate. Currents effect population. The amount of floating small material in the water has something to do with it. Does your question imply a difference between sand and mud?

Q. Yes. I would like to ask you in your opinion as an expert would that make any difference?

A. I would be inclined to think that any ship sunk in mud would be able to support a more luxuriant growth of fouling organisms than one sunk in sand.

Q. If it is sunk on a sand bottom, there is a dearth of organisms to attract fish, as opposed to a mud bottom?

A. Do you mean without the ship being there first of all?

Q. All right. We will say without the ship being there.

A. Different types of mud, water, etc., would enter into it.

Q. Then is it your testimony that there are innumerable factors that go to where fish will congregate in addition to the fact that an object has been sunk?

A. I think that they all play a part, but compared to placing an object in the water they simply alter in some way the magnitude of settling on those objects. I am not quite sure I understand your questions.

Q. I will ask you this: Let's assume that this hypothetical battleship has been sinking in the bottom of the Gulf for a number of years and that it will continue to sink. What effect does that have upon the fish?

MR. McLANE:

The question is not properly phrased. He is apparently trying to state a hypothetical in a roundabout way. I think he can ask him a hypothetical as an expert but not just cross-examine him about some other matter.

COURT:

Can you be more specific?

MR. McLANE:

The question is not properly phrased and is not in cross of anything asked on direct.

COURT:

The objection is sustained.

MR. HARRELL:

I believe he asked him the question with respect to his sunken battleship. If I can develop that in cross examination I can give him various hypotheticals as to whether it sank 1/4, 1/2, 3/4, or all the way. That is what I had in mind.

COURT:

The question assumes facts not in evidence, that is, that the vessel continued to sink deeper. I believe that is what your question stated.

MR. HARRELL:

He assumed that the armor had been taken off.

COURT:

That doesn't have anything to do with this question.

Q. I will ask this to you as an expert: Would a ship which lies on the bottom so that it has a greater surface area exposed be more attractive to fish than the same ship which has sunk leaving less surface exposed?

MR. McLANE:

We object on the same ground.

COURT:

The objection is overruled.

A. If the same ship were to sink and sit on the bottom it would offer a greater attraction for fish than if it were partly sunk in the mud.

Q. Then is it not true that the more it sinks in the mud the less its attraction will be for fish?

A. Correct.

Q. Following that to its conclusion, if it sinks so that it is completely covered with mud it will have no attraction for fish?

A. I think that is a fair statement.

Q. In other words, its attraction for fish diminishes as it sinks deeper and deeper in the mud?

A. I think so.

Q. Mr. Engle, are you familiar with the method of the Japanese in sinking concrete fish apartment houses, so to speak, in the sea?

MR. McLANE:
We object. That is not in cross of anything on direct.

COURT:
The objection is overruled.

A. No, I am not.
Q. You have never heard of this method of attracting fish?
A. Not that specific method.
Q. What methods have you heard of?

MR. McLANE:
That is not in cross of anything asked on direct.

COURT:
The objection is overruled.

A. There are several ways that you can attract fish: By placing broken drain tile in the offshore water; by placing car bodies old street cars, various pieces of motors, junk, broken concrete of various types.
Q. Is it not true that if this particular type junk were distributed in the same area and exposed the same amount of surface as a battleship it would lend the same attraction and perhaps more so to fish because it would be more accessible to shelter?

MR. McLANE:

That is immaterial and irrelevant insofar as this witness is concerned. We are dealing with a given situation. What other things may or may not do has no connection.

MR. HARRELL:

This witness testifies as an expert from the Conservation Board of the State of Florida. He states generally what the Board of Conservation does. I am getting to the point of asking have they ever done anything like this and also to ask him something about the result in an effort to show that a hundred different things can be done to attract more fish than to leave the battleship there.

COURT:

The objection will be sustained.

MR. HARRELL:

I want to make this point: They come seeking equity. We think they should do equity. Would it be doing equity for them to sink a few old pieces of concrete, car bodies, and the like? I think that would bear on the equity in this case.

COURT:

Do I understand that you are proffering on behalf of your client to substitute as good fish attractors out there as the battleship?

MR. HARRELL:

We are not exactly proffering that, but I want to get his feelings on that so we would have expert testimony on what would attract. This is our purpose.

COURT:

The Court is going to allow the question, reserving ruling, however, on its admissibility until it is later shown to be connected or not.

A. Initially it would offer the same attraction, but it would be of a more temporary nature, I think, because it would be structurally not as sound as a battleship. Eventually it would, as all metal will in time, corrode, dissolve, and be washed away by sea water.

Q. If we assume that we are using concrete block would that not last as well as the metal on the battleship?

MR. McLANE:

We object. He is not an expert as to what will last a greater time.

COURT:

The Court will allow the question with the same reservation.

MR. McLANE:

May I at this time interpose objection to all questions on the same subject?

COURT:

Yes.

A. I am under the impression that the armor plate of battleships is made of nickel steel. Nickel steel is highly resistant to corrosion. Stainless steel is an example. I don't feel that I could tell whether or not concrete would last as long.

THEREUPON, THE WITNESS WAS EXCUSED.

C. A. BAIRD, a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. McLANE:

Q. Your name is C. A. Baird?

A. Yes, sir.

Q. Where do you reside?

A. Box 270½ Gulf Beach Highway, located at a lagoon known as Harris Fish Camp.

Q. Do you own Harris Fish Camp?

A. Yes, sir; own and operate it.

Q. How long have you owned and operated it?

A. Since November 15, 1950.

Q. Have you previous to that time fished in the waters of the Gulf of Mexico outside the harbor of the city of Pensacola?

A. Yes, sir.

Q. For how long have you done so?

A. I have had a commercial license since 1943.

Q. In connection with your business now as owner of Harris Fish Camp do you have occasion to take out charter parties?

A. I do.

Q. Explain what you mean by charter parties.

A. I have an agreement with tourist courts and hotels. I have a private charter boat and we take them fishing and various places in the Gulf.

Q. Do you have occasion to talk to these people whom you take out and find out where they come from and their interests?

A. Yes, sir.

Q. State where the people come from that you have taken out.

A. I can before the last few weeks: Mississippi, Nashville, Birmingham, Tampa—

MR. HARRELL:

I think it is immaterial where they come from.

COURT:

I believe the complaint alleges that this sunken vessel constitutes something in the nature of a tourist attraction. The objection is overruled.

Q. Where else were the people from during the current year?

A. During the rodeo we had people from Chicago that stayed two weeks. We have had people from Alabama, Baton Rouge, and a number of places. I can't remember all.

Q. Do you carry a number of people from within and without the state?

A. Yes, sir. I believe last month we carried 309 out of state people.

Q. Do you mean during the last calendar month?

A. From the middle of July to the middle of August.

Q. In connection with your charter, what do you furnish these people and where do you go fishing?

A. We furnish the rods and reels. We do trawling and furnish lures. We fish the Massachusetts and the sea buoy. The Massachusetts is one of the best attractions.

Q. That is the sunken vessel?

A. Yes, sir. 1.1 mile from the nearest land marker.

Q. 1.1 mile?

A. Yes, sir.

Q. How often do you average taking a charter?

A. Up until the last two weeks, every day. There has not been much business in the last two weeks. Up until then I would go approximately every day.

Q. About how many people did you take each time?

A. I have had as high as 14; I prefer 8.

Q. You furnish them rods and reels. Is that commonly known as sport fishing?

A. Yes, sir.

Q. Describe your catches.

A. The last trip we had 18 mackerel, 11 king and 7 Spanish. Very few times I didn't catch fish.

Q. Where do you normally fish?

A. At the Massachusetts. The main thing with me, it is close. And it is one of the best places in Northwest Florida, a breeding ground, and the old ship itself is a land marker. Even if we go further out in the Gulf, at night as the light turns we can tell where we are.

Q. In other words, it is used as a navigation aid for small craft?

A. Yes, sir.

Q. How long have you been personally familiar with the Massachusetts?

A. Since 1943. That is how long I have been fishing around it. I have read about it a good many years.

Q. Have you compiled any file in connection with the history of the Massachusetts?

A. I have this picture of the Massachusetts, some newspaper clippings, etc.

Q. I show you here a picture entitled "The Old U. S. S. Massachusetts." Can you identify that? Where did you obtain it?

A. That came from a Navy scrap book printed in Pensacola for the benefit of the people that work for the Navy and for servicemen as a souvenir.

Q. How long ago was it printed?

A. I think I got that in 1944.

Q. Did you clip this copy?

A. I have the whole book, but I just clipped this from it.

MR. McLANE:

We would like to offer this in evidence as Plaintiff's Exhibit No. 1.

MR. HARRELL:

May I ask one question? Do you have the book from which this was clipped?

WITNESS:

I sure do.

MR. HARRELL:

Do you have it with you?

WITNESS:

No, sir.

MR. HARRELL:

Does the book state when this photograph was taken?

WITNESS:

That was all that was with this picture. It shows all the Air Station Training Command at that time and several—

MR. HARRELL:
What was the name of the book?

WITNESS:
"Naval Air Station Training Ground" I believe it was. It is a pretty good size book, has about 100 pages.

MR. HARRELL:
No objection.

Thereupon, the photograph was admitted in evidence as Plaintiff's Exhibit No. 1.

Q. (Continued by Mr. McLane) I show you here a picture. Who is that?

A. Me. This picture was taken in 1954 by Harold Stokes. We were fishing at the Massachusetts. He and Bobby Gaines, I believe.

Q. Is that background the Massachusetts?

A. Yes.

Q. Was that picture handed to you by the person who took it?

A. That picture was in the paper.

MR. McLANE:
We offer this picture in evidence as Plaintiff's Exhibit No. 2.

There being no objection, the picture was so admitted.

Q. I believe you mentioned in the earlier part of your testimony that in the last couple of weeks fishing had not been so good?

A. To be exact, I have 7 Gulf Trawling boats. I usually rent all of them. I rented 2 Saturday, 1 Sunday, and since then not any.

Q. Are you familiar with any demolition around the Massachusetts?

A. Yes, sir. I was out when they laid the buoys.

Q. How long ago was that?

A. I don't remember the exact date.

Q. Was it recently?

A. The last time was about two or three weeks.

Q. Have you seen any activity since that time?

A. Three times they started to salvage the ship and I and the Chamber of Commerce—

Q. I mean this particular time.

A. Yes, sir. I was out there when the tug boats were out and the boys were diving.

Q. Do you know the name of the tug boat?

A. Not offhand.

Q. Do you know it to be a boat connected with the operation?

A. Yes, sir. It was tied with a red buoy. It was anchored there and I seen one of the fellows that is here in court standing on the bow end of it.

Q. Mr. Baird, prior to the last two weeks when you said fishing has not been so good, what would be a fair day's catch by your charter?

A. I have caught as high as 200 pounds. I have caught as few as none.

MR. HARRELL:

I would like to object to that question as calling for a conclusion of the witness. I don't see how that can be material.

Q. I can ask that another way: What is the largest catch that you have had during the past fishing season —isn't fishing more or less by season?

A. Yes, sir.

Q. When does good fishing start?

A. Game fish around the 8th of May and through the first cold of November. However, the Massachusetts is good fishing for sheephead, grouper, etc., after that.

Q. During normal good fishing period, what is the largest catch that your charter has made in the area of the Massachusetts?

A. I think we have a picture where we caught 12 ling, the largest weighing 50 pounds.

Q. Is ling a game fish?

A. Yes.

Q. What is the least you have caught?

A. I have been once or twice and didn't catch any.

Q. Has or has not the fishing improved since 1943 around the Massachusetts?

A. I couldn't say it has improved. I would say more people fish there. At first when I started fishing the Massachusetts, just a few old people were there. Now, up until recently, it was nothing to see 60 or 70 boats.

Q. In other words, fishing has fallen off tremendously in the recent weeks?

A. Since it was buoyed off.

CROSS EXAMINATION.

BY MR. HARRELL:

Q. Isn't it true that fishing had fallen off prior to its being buoyed off and the salvage operation?

A. It is not true.

Q. Is it your testimony that fishing just prior to the salvage operation was just as good as in 1943?

A. I would say that since more people were fishing there were more fish caught. I would say that it was as good or better than at that time.

Q. Do you fish in the general area of the Massachusetts or just right around it?

A. I leave out at 3:30 or 4:00 o'clock in the morning and come back around 10:00 o'clock. I trawl the Massachusetts a number of times. I circle it, leave and go to the sea buoy and as I come back I circle it again.

Q. The truth of the matter is that the Massachusetts is just one place you fish?

A. Yes, sir. The Gulf covers a lot of places. You can go to Alabama or Cuba, but the Massachusetts is where I generally go and it is the most popular place in Northwest Florida.

Q. Isn't it true that fishing out there sometimes they bite at one place and sometimes at another?

A. That would be true any place in the whole Gulf.

Q. And sometimes you don't catch them at the Massachusetts and you do at the sea buoy? Isn't that true?

A. That is true.

THEREUPON, THE WITNESS WAS EXCUSED.

GEORGE DARBY, a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. McLANE:

Q. Your name is George Darby?

A. Yes, sir; that's right.

Q. Mr. Darby, where do you live?

A. On the Gulf Beach Highway down here.

Q. Are you employed at the present time?

A. No, sir, I am not.

Q. Have you been employed in the past?

A. Oh, yes. I am a retired Coast Guard.

Q. Retired U. S. Coast Guard?

A. Yes, sir.

Q. For what period of time were you in the Coast Guard?

A. For 33 years until about 10 years ago. I came in 1906.

Q. Were you stationed in Pensacola in connection with your duties?

A. Yes, sir.

Q. Over what period of time?

A. You mean in Pensacola?

Q. Yes.

A. I came to Pensacola when I was 8 years old.

Q. Did you do your entire stretch with the Coast Guard in the Pensacola area?

A. Yes, sir.

Q. What were your duties?

A. Tending buoys, beacons, and lighthouse. I was keeper of the Pensacola light station for a number of years.

Q. Are you familiar with the wreck of the Massachusetts outside the harbor of Pensacola?

A. Yes, sir. I seen it when they brought it there. I was tending those beacons.

Q. You actually saw her when she was brought ino position?

A. Yes, I seen them when they towed her in and scuttled her.

Q. What do you mean by "scuttled"?

A. Opened the sea cocks and let her go.

Q. They purposely sank her?

A. Yes, sir.

Q. Did she rest on the bottom?

A. Yes, sir.

Q. Was she put to any further use by the United States Government?

A. The Army used her for a target several times.

Q. Do you know when that was?

A. That was in 1918, the latter part of 1918 when they brought her in here, in October or November. Right after they brought her in, the next spring they would shoot at her with those guns from Fort Pickens and Fort Barrancas, from Olive, Palmetto, and shore batteries from Fort Barrancas.

Q. Mr. Darby, do you fish?

A. Yes, sir.

Q. Frequently?

A. Every chance I get.

Q. How long have you been fishing?

A. All my life.

Q. Have you fished off Pensacola harbor?

A. Yes, sir, all kinds, snapper and everything. I have fished around the mouth of the bay down there ever since 1900.

Q. How often do you go now?

A. About once a week now. I used to go two or three times a week.

Q. Do you ever fish in the vicinity of the Massachusetts?

A. Yes, sir; that is where I go.

Q. Do you see other boats out there?

A. Worlds of boats go out there. There is almost as much traffic as on Palafox Street fishing and trawling around that ship.

Q. State from your experience in fishing in the area of Pensacola whether or not that in the vicinity of the Massachusetts is considered good or bad fishing.

A. That is considered good. That is really the only place to fish. It seems that the little fish grow there and the big fish come there to feed and they lay around there.

MR. HARRELL:

We object to this testimony regarding the biology of the fish.

COURT:

I think he is talking from his own experience. The objection is overruled.

MR. HARRELL:

Have you ever looked down and seen any little fishes—

MR. McLANE:

He can bring that out on cross. I would appreciate his letting me finish with the witness.

Q. Have you ever been on the Massachusetts?

A. Many times.

Q. Have you ever fished from the Massachusetts?

A. Yes, sir. The decks used to be 6 or 8 feet out of the water when she was put there.

Q. Have you ever taken charter parties there?

A. I have taken a good many parties and left them.

Q. What do you mean by "left them"?

A. Left them on the decks at night before the decks were ruined.

Q. Do you know how long ago that was?

A. 1918-1920 and on up to 1930 when the decks got bad.

Q. In connection with your charter operations have you in the recent past carried people to that area from other states?

A. No, it has been quite a few years since I got out of that boat business on account of my duties.

CROSS EXAMINATION.

BY MR. HARRELL:

Q. Mr. Darby, I believe you say that in years past you could go out and actually board the Massachusetts?

A. Yes, sir.

Q. Isn't it true that people used to have picnics on the decks?

A. They would take parties out there and they would picnic and fish and have big times.

Q. I mean they could actually walk on the deck.

A. Yes, sir.

Q. Is that true now? Can you walk on the deck now?

A. No, the deck is under water. The turrets are still sticking up there. People get on them and fish.

Q. But that is the only thing exposed now, just the turrets?

A. Yes, sir.

Q. I believe you say you recall when they took her out there and opened the sea cocks and let her sink?

A. The Navy tug brought her in and sank her. I understood she was brought in at that time for the Army to practice.

Q. Do you recall in August 1925 when she was put up for sale?

MR. McLANE:

That is not in cross of anything on direct, and is immaterial.

COURT:

The objection is overruled.

A. I don't remember that. I don't remember it being for sale.

Q. Do you recall in January 1935 when she was offered for sale?

A. I do not.

Q. Have you ever seen anybody salvaging anything from the Massachusetts in years past?

MR. McLANE:

Objected to as irrelevant and immaterial. It is a shotgun-spread question and has nothing to do with these defendants or their rights.

COURT:

The objection is overruled.

A. No, sir; I have not.

Q. Have you ever taken any brass or lead or anything from her?

A. No, sir.

Q. How often have you been around her—once a week, or what?

A. I have been out there practically once a week for the last 30 or 40 years.

Q. Although you have been out there once a week for the last 30 or 40 years, it is your testimony that you have never seen anybody conducting any type salvage operation on the Massachusetts?

A. I have not.

Q. Have you ever seen skin divers going down?

A. Yes, sir.

Q. Have you ever seen skin divers bringing up brass?

A. I haven't.

Q. Mr. Darby, I believe you state that you have been familiar with the Massachusetts since she was sunk, that you saw her practically on an average of once a week. Is it or is it not true that she has been gradually sinking down through the years?

A. Yes, sir. She has been getting lower and lower.

Q. And that sinking has been continuously, would you say, through the years?

A. Through the years? Of course, I can't tell right now about those turrets. I don't think they have gone down any for the past 6 or 8 years, since the last big storm we had. Those storms seem to kind of settle it.

Q. Isn't it true that she settled quite a bit when we had a hurricane, I believe it was in 1948—or the last big hurricane we had in Pensacola?

A. I don't think there has been any difference since 1948.

Q. Then it is your testimony that so far as you can tell she hasn't sunk any since 1948?

A. No, I think not.

THEREUPON, THE WITNESS WAS EXCUSED.

HAROLD STOKES, a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. McLANE:

Q. Your name is Harold Stokes?

A. Yes, sir.

Q. Mr. Stokes, by whom are you employed?

A. The Pensacola News-Journal.

Q. In what capacity are you employed by the Pensacola News-Journal?

A. Managing Editor of the Pensacola Journal.

Q. Are you a fisherman?

A. Yes, sir.

Q. Do you frequently fish?

A. Yes, sir.

Q. Are you familiar with the old Massachusetts outside the harbor of Pensacola?

A. Yes, sir.

Q. Have you fished in that vicinity in the past year?

A. Yes, sir.

Q. About how many times have you fished in that vicinity in the last year—or is there a fishing season?

A. To some people, not to me.

Q. All right. Will you answer the question?

A. About 50 times during the past year.

Q. From September 1955 to September 1956. Is that right?

A. Yes, sir. That is a guess. I don't know.

Q. Do you have occasion to observe people or fishing generally in the area of the Massachusetts?

A. Yes, sir. I have both from a personal observation and at one time about 6 or 7 years ago I began a fishing column in the paper. Even though I am not writing it at the present time I continue to get all reports and calls, and from both that and personal observation I get a great deal.

MR. HARRELL:

We object to testimony about the reports.

COURT:

The fact that he received reports is not objected to, but what the reports contained?

MR. HARRELL:

Yes, sir.

Q. Do you observe other people fishing in that area?

A. Yes, sir; and I have taken a number of pictures.

Q. Do you find a number of people fishing in that area?

A. Yes, sir; always.

Q. State from your experience and knowledge whether or not it is considered good fishing.

A. I think by most people who know fishing here at all it is considered the best.

MR. HARRELL:
Objection. He can testify to his personal knowledge with respect to the fishing.

COURT:
The objection is sustained.

Q. Let me ask you this: Do you have good luck in the vicinity of the Massachusetts?

MR. HARRELL:
We object to his luck as being strictly a generalization.

COURT:
The objection is overruled.

A. I don't consider it luck. I think the fish are there and can be caught because it is a natural arresting place for food going through the water.

Q. Have you observed the catches of other people around the Massachusetts?

A. I certainly have.

Q. Are those catches good or bad normally?

A. From my experience and personal observation of other boats, I would say that 9 out of 10 sports fishing boats that go into the area go to the Massachusetts. If fish are being caught they are caught there if nowhere else.

Q. Are you a member of the Pensacola Anglers and Hunters Club?

A. Yes, sir.

Q. Are you an official of the club?

A. No, sir.

Q. How long have you been a member?
A. About 5 years.

CROSS EXAMINATION.

BY MR. HARRELL:

Q. These same people that fish by the Massachusetts also fish by the sea buoy, don't they?

A. Yes, sir. People who fish regularly usually go there and fish and if the biting drops off—usually they bite for a while and drop off—the people go to the sea buoy and other places.

Q. Have you had occasion to write any article for the Pensacola paper about this controversy?

A. Yes, sir.

Q. Did you write the article that appeared in the Friday, August 24, Pensacola Journal?

A. Could I see it? (After examing) No, sir; I didn't write that.

THEREUPON, THE WITNESS WAS EXCUSED.

R. H. POWELL, a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. McLANE:

Q. Your name is R. H. Powell?
A. Yes, sir.
Q. Mr. Powell, by whom are you employed?
A. Chemstrand Corporation in Gonzales, Florida.

Q. In connection with the activities of Chemstrand, do they have any provisions for recreational facilities for their employees?

A. Yes. We have a recreation association which has 1900 members.

Q. What position, if any, do you hold in that association?

A. President.

Q. Do you fish, Mr. Powell?

A. Yes, sir; I do.

Q. Do you do so-called deep sea fishing?

A. Yes, I do.

Q. Where?

A. Normally we fish around the mouth of the bay and the battleship Massachusetts.

Q. How often do you fish?

A. I have a cruiser and we usually spend the week end on the water.

Q. By "we" do you mean you and your family?

A. Yes.

Q. Do you have occasion to see other people out there?

A. Many times.

Q. Are any events sponsored by your organization?

A. Yes, sir. We sponsor what we call a $1,000 plant rodeo. Nine-tenths of that is concerned with salt water fishing.

Q. Did you have one of these during the current year?

A. Yes, sir.

Q. When?

A. In three periods, from May. Two periods are completed; one ends September 20.

Q. Did you participate in that rodeo?

A. Yes, sir.

Q. How many people in your plant participated, or do you know?

A. Yes, sir. I think we have about 1,000 employees who are fishermen and it so reads on their recreation cards. The rodeo includes families, too.

Q. Have you seen other persons fishing in the vicinity of the Massachusetts?

A. Yes, sir. This week you had to get in line to go there.

Q. State the best catch you have had in the vicinity of the Massachusetts.

A. I won the Pensacola fishing rodeo by catching a 31-pound ling there last year. This year I caught a 14-pound Spanish mackerel and 7 ling to win the rodeo. Another time a 12-pound [illegible]ounce Spanish mackerel that won.

Q. Which do you consider your best catch?

A. The 31-pound ling.

Q. Do you figure your catch by number or by size?

A. By size, most of the time. My wife and I last September took 39 Spanish mackerel anchored by the Massachusetts. That is the best catch I have had as to number.

Q. And, of course, you have had poorer catches?

A. Oh, gosh, yes.

CROSS EXAMINATION.

BY MR. HARRELL:

Q. Do you normally trawl, sir?

A. Not always. Lots of time we anchor when we hit a school of fish and use casting reels.

Q. Do you find schools of fish at places other than the Massachusetts?

A. Yes. You can go into blue water and find mackerel, mainly because you don't have the current very close.

RE-DIRECT EXAMINATION.

BY MR. McLANE:

Q. Are you a member of the Pensacola Anglers and Hunters Club?

A. Yes, sir.

Q. Have you seen any of the members of that club fishing around the Massachusetts that you know of your own knowledge?

A. Yes, sir; I have.

RE-CROSS EXAMINATION.

BY MR. HARRELL:

Q. How many?

A. Mr. Jim Bromley, for one. Mr. Luddy Keene is another. That is the only two offhand that I can recall.

THEREUPON, THE WITNESS WAS EXCUSED.

ROLAND WOLFE, a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. McLANE:

Q. Your name is Roland Wolfe?

A. Yes, sir.

Q. Mr. Wolfe, what is your occupation?

A. Outdoor editor of WBSR Radio.

Q. What do your duties as outdoor editor include?

A. Gathering information and broadcasting all the dope we can get on outdoor things, mostly pertaining to fishing and boating in this area.

Q. How long have you held that position?

A. About 4 years.

Q. With this radio station?

A. I was with WCOA first.

Q. But you have been in this area doing this work for 4 years?

A. Yes, sir.

Q. Do you have occasion to interview persons in connection with your work?

A. Every day.

Q. Have you in the recent past made a survey of persons who come to Pensacola as to why they come to Pensacola and their interests?

A. The nearest I could come to that would be last year at the conclusion of the first Pensacola fishing rodeo.

MR. HARRELL:

We object on the ground that clearly this man is not an expert pollster. He has given us nothing as to the sample taken, method of taking, and any information he gleaned through interviews is hearsay.

COURT:

I believe the question is whether or not he made a survey. Your objection may be premature.

A. During the latter part of 1955 we proceeded to talk to over 150 people.

Q. Who is "we"? Did you do it yourself?

A. 90% of it.

Q. How did you determine the persons you would talk to?

A. We talked to people from Palafox Pier. So long as they were out of state, that was all we cared.

Q. The people you talked to were exclusively out of state?

A. Yes, sir.

Q. And you talked to how many?

A. Over 150.

Q. What was the purpose of that survey?

A. We were trying to promote the waterfront and tourist attraction facilities for Pensacola. Durin the rodeo we ran across hundred and hundreds from out of town and took the trouble to talk to some of those people to find out why they came to Pensacola.

Q. Was this work under your supervision?

A. Yes, sir.

Q. Give us the results of the persons you interviewed and the ones that were interviewed by others under your supervision.

MR. HARRELL:

We object on the ground that any result that he obtained is clearly based on hearsay testimony.

MR. McLANE:

What better result can you get than from the people themselves?

MR. MERRITT:

The best evidence would be the people themselves. This would be introduction of hearsay evidence which is not within the exceptions to the hearsay rule. It would be an extra-judicial personal interview con-

ducted of 100 out of thousands and thousands without opportunity of examining and cross examining to determine the other end of the conversation.

MR. McLANE:

It seems to us that this man shows what he has taken and the method of sampling. He is not testifying what they said but is testifying to the results he obtained.

COURT:

The objection will be sustained.

MR. McLANE:

We proffer by this witness the results of the survey which he conducted just subsequent to the rodeo of 1955.

COURT:

The proffer is denied.

Q. Do you fish yourself?

A. Yes, sir.

Q. Frequently or infrequently?

A. Frequently.

Q. Where do you fish?

A. I fish the entire area but the Massachusetts quite often.

Q. In the course of fishing around the Massachusetts do you have occasion to observe to determine whether or not there are other boats and fishermen in the area?

A. Well, that is part of my job in order to carry on this report that we have on the radio.

Q. Do you ever take a count of boats?

A. Numerous times.

Q. When was the last count that you have taken, I mean approximately when?

A. Toward the end of the rodeo about three weeks ago.

Q. They just completed a rodeo here? Is that correct?

A. Yes, sir.

Q. In the vicnity of the Massachusetts how many boats did you count?

A. I left the area about 10 minutes to 7:00. Somebody on the boat counted 28; I counted 29 and they kept coming.

Q. Was that 7:00 A. M. or P. M.?

A. A. M.

Q. What about any count that you made prior to that?

A. I counted myself as many as 33 boats traveling around that circle.

Q. At the same time?

A. Yes, sir; at the same time.

NO CROSS EXAMINATION.

THEREUPON, THE WITNESS WAS EXCUSED.

MR. McLANE:

We on behalf of the State offer in evidence a certified copy of the minutes of the Trustees of the Internal Improvement Fund of the State of Florida of a meeting held on August 21, 1956, for this purpose: to show the action taken by the Trustees insofar as the claims of these persons are concerned. These persons in their answer claim that the State has done

nothing about it. I think the materiality of this will clearly appear in view of that.

MR. HARRELL:

We object on the ground that it is clearly inadmissible. It is self-serving and has no relevancy to this proceeding.

COURT:

Mr. McLane, can you point out to the Court any evidence that this document is admissible?

MR. McLANE:

Yes, sir. As I understand, it is a question of what is in the document.

COURT:

No, I am concerned about whether a document of this kind is one of the kind that is admissible in evidence.

MR. McLANE:

Yes, sir. Just one minute, Your Honor. I think I can find the statute. 92.12, Florida Statutes, says: "In all cases where any record, pleading, document, deed, conveyance, paper or instrument of writing is, or may be, required or authorized to be made or filed or recorded in any public office of this state or of any county thereof, a copy thereof, duly certified under the hand and seal of office (if there be seal of office, and if there be no seal of office, then under the private seal of the officer having the custody or control of the same), to be a true and correct copy of the original, on file or of record in his office, shall in all cases and in all courts and places be ad-

mitted and received in evidence with the like force and effect as the original thereof might be. Nothing herein contained shall be construed as to prevent any court or judge before whom such copies may be offered in evidence from requiring the party offering the same to produce or account for the original of such copy, if the same shall be deemed necessary or proper for the attainment of justice."

MR. MERRITT:

In the first place, if they had the original we would object to the introduction of the original. This particular one seems to be minutes of the State Board of Conservation and the Trustees. It would be inadmissible because, as Mr. Harrell has said, it would be a self-serving declaration and in addition it violates all manner of rules of evidence in that it contains a part of the minutes statements of fact which are in issue in this cause and it includes recitations of telephone conversations and other matters wholly beyond the possibility of the other side being able to inquire into, and it would not be in my opinion admissible if they had the original here. I feel that more so is it true that the certificate of the secretary of the very organization who is proffering the self-serving instrument would not make it valid. The certificate is merely from their own secretary to the effect that the plaintiff who has an interest in this cause has taken some star chamber action accepting things as facts.

COURT:

What is the date of that meeting?

MR. HARRELL:
August 21, 1956.

COURT:
When was the suit filed?

MR. McLANE:
Last Thursday afternoon. Thursday following the Tuesday of the meeting of which this is excerpts of the minutes. We have no desire to get in the whole thing if the Court feels that it is self-serving. We do feel that it is important from the standpoint of the action taken by the board. That is the whole purpose of it.

COURT:
Before I look at it, suppose you point out to defendants the portion you wish to introduce.

MR. McLANE:
I want to show that a joint meeting of the State Board of Conservation and the Trustees of the Internal Improvement Fund was held. This portion, beginning "That the Trustees of the Internal Improvement Fund joined the State Board of Conservation in taking the necessary procedure against the dismantling and removing of the U. S. S. Massachusetts" and ending with "It was so ordered."

MR. MERRITT:
This is nothing in the world but an effort to bolster the evidence alleging facts. It seems that the organization bringing suit and then bringing a certificate over the seal of their own secretary as to things they did just before bringing suit is immaterial.

MR. HARRELL:

If I had Mr. F. C. Elliott over here I would like to ask if they had ever passed any resolution prior to August 21, 1956, that they would take over the Massachusetts.

COURT:

Those portions cited by the plaintiffs will be admitted in evidence. All other portions of the document will be stricken and will not be admitted in evidence. (Plaintiff's Exhibit No. 5)

MR. McLANE:

We now offer in evidence as Plaintiff's Exhibit No. 6 a certified copy of the minutes of the State Board of Conservation of 21 August 1956 certified to by the secretary of the State Board of Conservation with reference to action taken by the State Board of Conservation in connection with directions to its director to attempt to stop the operations relative to the Massachusetts.

MR. HARRELL:

We wish to enter the same objection.

MR. McLANE:

There is more than this in this. The only purpose is to show, because the State Board of Conservation is a party to the suit, that the director—

COURT:

Read the portions you wish admitted to the reporter.

MR. McLANE:

(Reading) "Minutes, State Board of Conservation, August 21, 1956. The State Board of Conservation met this day in executive session with the following members present: Governor, Secretary of State, Attorney General, Comptroller, Treasurer, and Commissioner of Agriculture. * * * After further discussion motion was carried that the Conservation Board advise the director it is the desire of the Board to have salvage operations terminated and that it is the further desire of the Conservation Board that the Director and the Attorney General proceed in any lawful manner to bring about such termination."

MR. HARRELL:

Same objection.

COURT:

Same ruling. The portion read by plaintiff's counsel will be admitted.

* * * * * * * * *

JOHN PAUL JONES, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. HOPKINS:

Q. Please state your name.

A. John Paul Jones.

Q. State how long you have lived in Escambia County, Florida.

A. Since 1922.

Q. Are you at present president of the Pensacola Sports Association?

A. Yes, sir.

Q. Is that a non-profit organization?

A. Yes, sir.

Q. What is the membership of that organization?

A. A little over 200; about 203.

Q. As president of that association, Mr. Jones, is your board interested in the outcome of the litigation presently going on in this cause?

A. Very much so.

Q. Have you been instructed to do everything possible to show your interest?

A. Yes, sir.

* * * * * * * * *

S. S. BAGGETT, having been duly sworn, was called as a witness by Mr. Hopkins and testified as follows:

DIRECT EXAMINATION.

BY MR. HOPKINS:

Q. What is your name?

A. S. S. Baggett.

Q. Mr. Baggett, how long have you lived in Escambia County?

A. Since 1922.

Q. Are you president of the Pensacola Anglers and Hunters Club?

A. Yes, sir.

Q. Is that a local non-profit organization?

A. Yes, sir.

Q. What is its membership?

A. 506.

Q. Has your club taken any official action in this pending matter which has to do with the Massachusetts?

A. Yes, sir.

Q. Is your club interested directly in this litigation?

A. Yes, sir.

Q. Are you a fisherman?

A. Yes, sir.

Q. Do you have direct knowledge of the fact that various members of your club fish in and throughout this area around here?

A. Yes, sir.

* * * * * * * * *

EXAMINATION.

BY MR. McLANE:

Q. Mr. Baggett, when did your board or you as president authorized by your board first notify the state in connection with the present salvage operation by the Massachusetts Company?

A. I guess it was last week or the week before last when they authorized me to wire Mr. Ervin that we was interested in this operation and that it not be carried out.

Q. Did you send that wire, sir?

A. To Mr. Ervin?

Q. Yes.

A. Yes, sir.

Q. I show you a telegram dated August 20, addressed to Mr. Richard Ervin. Is that the telegram you sent?

A. Yes, sir.

MR. McLANE:

We would like to offer this telegram in evidence as Plaintiff's Exhibit No. 7.

There being no objection, the telegram was admitted.

* * * * * * * *

JAMES LESLIE BONNELL, having been duly sworn, was called as a witness by Mr. Harrell and testified as follows:

DIRECT EXAMINATION.

BY MR. HARRELL:

Q. What is your name?

A. James Leslie Bonnell.

Q. Mr. Bonnell, by whom are you employed?

A. By the Massachusetts Company.

* * * * * * * *

Q. Did you post bond with the U. S. Corps of Engineers?

A. I did.

MR. McLANE:

We object to this testimony as irrelevant and immaterial.

COURT:
The objection is overruled.

• • • • • • • • •

Q. Subsequent to that time did you post a $25,000.00 indemnity bond with the Corps of Engineers?
A. I did.

STANLEY DIEFENTHAL, a witness on behalf of the defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. HARRELL:
Q. What is your name?
A. Stanley Diefenthal.
Q. Are you connected with the Massachusetts Company?
A. Yes, sir.
Q. What is the nature of your connection?
A. I am executive vice-president of one of the corporations forming the Massachusetts Company.

• • • • • • • • •

A. I made a telephone call to Mr. Adams of the Corps of Engineers in Mobile and requested that in accordance with previous correspondence he issue a permit for the salvage of the Massachusetts. The permit was to keep a floating plant at the site. Mr. Adams agreed to do so upon posting of a $25,000.00 surety bond.

MR. McLANE:
We object to that testimony.

COURT:

The portion of the testimony regarding Mr. Adams' agreement is stricken. The objection is sustained to that extent.

Q. After you got in touch with Mr. Adams, did you post the surety bond?

A. Subsequent to my conversation with Mr. Adams we posted a $25,000.00 surety bond to guarantee that our operations would not be a hazard to navigation.

Q. Did you subsequently commence operations on the ship?

A. In a few days we began blasting. We had been operating, setting buoys, etc., for several days before that time.

Q. Have you ascertained the amount of money that you have spent in connection with this project to date?

MR. McLANE:

We object. That is irrelevant and immaterial.

COURT:

The objection is overruled.

A. I have to an approximate figure.

Q. Please state how much your company has spent?

A. May I consult my memorandum? Our books show that from the beginning of this specific operation which I think began around the first or second of August, we have spent some $8,988.00. This of course, does not reflect the entire expenditures which we have obligated ourselves for in other substantial sums. And there are other substantial expenditures

which we have made in the past which are not reflected by the books of this particular venture. The sums that we have obligated ourselves for with respect to this particular venture are $21,200.00. We have obligated ourselves to employ a diver for a minimum of 30 days for $2600.00.

Q. Has he actively been working on the job?

A. Yes.

Q. At what rate of pay?

A. $2,000.00 for the 30 days plus $600.00 living expenses.

MR. McLANE:

Same objection to the entire line of questioning regarding the expenditures.

COURT:

Same ruling.

A. We have obligated ourselves to the George Whiteman Towing Company for the rental of a tug for 30 days for $200.00 per day, a total of $6,000.00. We have obligated ourselves to Crescent Towing and Salvage Company of New Orleans to tow our floating crane to Pensacola and back again, for $9600.00. We have obligated ourselves to pay passage and expenses of the German advisory group who are here, which I estimate would be in the neighborhood of $3,000.00 up to this moment. With regard to our past expenses, it cost approximately $1500.00 to bring the prior German salvage expert to this country and return him to Germany. I say approximately because one of the other venturers expended this sum and it has not been reported to us. We expended the sum of approximately $2400.00 in taking samples from the wreck

during April and May of this year, samples of steel. We expended in the past on two occasions a total sum of approximately $2,000.00 in employing divers and boats to make exploratory trips to the wreck.

Q. Mr. Francis Taylor testified that you had spent approximately $1,000.00 with one of his companies. Is that included?

A. If he has rendered his invoice it would probably be reflected here. We are incurring additional expenses every day. There is some lapse of time afterward before invoices are paid and entered on our books.

Q. From your memorandum, how much money have you spent or obligated yourself to spend in connection with this operation?

A. From this memorandum we have already out-of-pocket expense of $8,988.00. This was up until a few days ago; I don't know what it is now. We have obligations in the amount of $21,200.00. And we have had past expenses in the amount of approximately $6,000.00.

CROSS EXAMINATION.

BY MR. McLANE:

Q. Mr. Diefenthal, as I understand, going back to early 1953 you employed a diver?

A. Right.

Q. How long was he on the spot?

A. I think for 2 days.

Q. Did you have any buoys or anything out there to indicate that there was any diving operation?

A. No, sir.

Q. I believe you said in late 1953 or 1954 you had a salvage expert look at the ship?

A. Late '54.

Q. What if anything did that expert do at that time?

A. He estimated the amount of tonnage that could be recovered from the ship.

Q. Did he dive?

A. He didn't use diving apparatus. He went down with a mask.

Q. How long was he on the spot?

A. 2 days.

Q. Then we come down to April or May of 1956?

A. For what purpose?

Q. To get samples of steel.

A. 1956.

Q. We jump to April or May 1956 when you took samples of steel?

A. Right.

Q. And you made a trip to Germany in May?

A. Right.

APPENDIX "B".

Appendix for Appellee.

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR ESCAMBIA COUNTY, FLORIDA. IN CHANCERY.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, LEROY COLLINS, as Governor of the State of Florida, RAY E. GREEN, as Comptroller of the State of Florida, J. EDWIN LARSON, as Treasurer of the State of Florida, RICHARD W. ERVIN, as Attorney General of the State of Florida, and NATHAN MAYO, as Commissioner of Agriculture of the State of Florida, composing the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND of the State of Florida, a component governmental agency of the State of Florida; LEROY COLLINS, as Governor of the State of Florida, R. A. GRAY, as Secretary of State of the State of Florida, RICHARD W. ERVIN, as Attorney General of the State of Florida, RAY E. GREEN, as Comptroller of the State of Florida, J. EDWIN LARSON, as Treasurer of the State of Florida, THOMAS D. BAILEY, as State Superintendent of Public Instruction of the State of Florida, and NATHAN MAYO, as Commissioner of Agriculture of the State of Florida, constituting the STATE BOARD OF CONSERVATION of the State of Florida, a component governmental agency; and RICHARD W. ERVIN, as Attorney General of the State of Florida, in his official capacity as Attorney General of the State of Florida,

Plaintiffs,

versus

SOUTHERN SCRAP METAL COMPANY and MASSACHUSETTS COMPANY,

Defendants.

• • • • • • • •

14. The Plaintiffs believe that the battleship "Massachusetts" which has been sunken and lies on the bottom of the Gulf of Mexico on the eastern tip of Caucaus Shoals, westward of the entrance of the Pensacola Bay in the Gulf of Mexico approximately one-and one-half or two miles from the shore or mainland of Escambia County, Florida, is not owned by the United States or any of its agencies or departments and that the said battleship "Massachusetts" has been abandoned by the United States Government and ownership of the said battleship "Massachusetts" is not claimed by the United States Government or any of its departments or agencies and neither the United States Government nor any of its agencies or departments claim any right, title or interest in the said battleship "Massachusetts".

• • • • • • • •

RICHARD W. ERVIN,
RALPH M. McLANE,
JOHN D. MORIARTY,
Attorneys for Plaintiffs.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR ESCAMBIA COUNTY, FLORIDA. IN CHANCERY.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Plaintiffs,

versus

SOUTHERN SCRAP METAL COMPANY and MASSACHUSETTS COMPANY,

Defendants.

Come now the defendants and move the Court to dismiss the complaint heretofore filed herein on the following several grounds:

1. That the Court is without jurisdiction.

2. That the complaint fails to state a claim upon which relief can be granted.

3. That the complaint fails to state a cause of action.

4. That there is no equity in the complaint.

5. That the plaintiffs do not come into equity with clean hands.

6. That it affirmatively appears that the plaintiffs are guilty of laches.

7. That the allegations of the complaint affirmatively show that the rights of the defendants are paramount to those of the plaintiffs.

R. H. MERRITT,
JONES and HARRELL,
Attorneys for Defendants.

* * * * * * * *

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR ESCAMBIA COUNTY, FLORIDA. IN CHANCERY. No. .....

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Plaintiffs,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., M. D. FRIEDMAN COMPANY, a corporation and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Defendants.

ORDER DENYING MOTION TO DISMISS.

This cause coming on to be heard upon the defendants' motion to dismiss the complaint herein, and the Court having heard the argument of counsel for the respective parties, and being advised of its opinion, it is:

ORDERED, ADJUDGED AND DECREED that said motion to dismiss by and the same is hereby denied.

DONE AND ORDERED in Chambers in the City of Pensacola, Escambia County, Florida, this 25th day of August, 1956.

(S.) HAROLD B. CROSBY,
Circuit Judge.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR ESCAMBIA COUNTY, FLORIDA. IN CHANCERY. No. .....

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Plaintiffs,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., M. D. FRIEDMAN COMPANY, a corporation and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Defendants.

ORDER GRANTING TEMPORARY INJUNCTION.

This cause coming on to be heard upon application of the Plaintiffs for a temporary injunction and the Court

having heard the testimony, the argument of counsel for the respective parties, and being advised of its opinion it is:

ORDERED, ADJUDGED AND DECREED that the Massachusetts Company, a joint venture composed of Southern Scrap Material Company, Ltd., M. D. Friedman Company, a corporation, and Eastern Scrap and Salvage Company, a corporation, and each of them, their agents, servants, employees or any other person acting for or on behalf of any and all of said parties, be and they are hereby enjoined and restrained from removing, or attempting to remove from its present location, the wrecked and sunken battleship "Massachusetts", or any part or parts or appurtenances thereto, lying upon the tidal water bottoms of the State of Florida, off the coast of Escambia County, Florida, in the Gulf of Mexico, until further order of this Court.

FURTHER ORDERED, ADJUDGED and DECREED that the Defendants be and they are hereby permitted to take such steps as may be necessary to protect themselves from loss under the indemnity bond posted with the United States Corps of Engineers, provided, in so doing, they shall not in anywise disturb or remove the wrecked battleship "Massachusetts", any portion thereof, or appurtenances thereto.

FURTHER ORDERED, ADJUDGED and DECREED that this cause come on for final hearing on August 29, 1956, at the hour of 10:00 O'clock A.M.

DONE AND ORDERED in Chambers in the City of Pensacola, Escambia County, Florida, this 25th day of August, 1956.

(S.) HAROLD B. CROSBY,
Circuit Judge.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, IN AND FOR ESCAMBIA COUNTY, FLORIDA. IN CHANCERY.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Plaintiffs,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation; M. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Defendants.

ANSWER & DEFENSES.

Come now the defendants and for Answer to the Complaint heretofore filed herein, say:

FIRST DEFENSE.

That the Court is without jurisdiction.

SECOND DEFENSE.

There is no equity in the Complaint.

THIRD DEFENSE.

That the State does not come into equity with clean hands.

FOURTH DEFENSE.

That the State has stood by for some thirty years and asserted no claim whatsoever to said vessel "MASSACHUSETTS" and knew or should have known that the same had been abandoned, and knew or should have known that for a number of years various salvage operations have taken place aboard the vessel. In addition thereto, plaintiffs stood by, acquiesced, did nothing, raised no objection whatsoever, asserted no right or claim in opposition to the claim of the defendants, and the State acquiesced and allowed the defendants to expend large sums of money in connection with its salvage operation and to spend a great deal of time, effort and labor in connection therewith; and plaintiffs further allowed the defendants to obligate themselves to spend large sums of money in the future in connection with said salvage operation.

FIFTH DEFENSE.

That the State is estopped to assert any right, title or interest in and to said vessel because of laches.

SIXTH DEFENSE.

That the bill fails to state a cause of action.

SEVENTH DEFENSE.

That the equities in this cause are with the defendants and against the plaintiffs.

EIGHTH DEFENSE.

And answering the Complaint heretofore filed, the defendants further say:

1. The defendants admit the allegations of paragraphs 1, 2 and 3 of the Complaint.

2. The defendants allege that they have furnished the plaintiffs with the correct names of all of the parties defendant to this cause.

3. The defendants admit that paragraph 5 of the Complaint alleges a law of the State of Florida, but deny that Section 253.12 is applicable in this case.

4. The defendants deny the allegations of paragraph 6.

5. The defendants admit that Section 253.03, Florida Statutes, is the law of Florida, but deny that it is applicable in this cause.

6. The defendants admit that paragraph 8 alleges the boundaries of the State of Florida as set out in Article I Florida Constitution.

7. Defendants admit that the Submerged Land Act as alleged in paragraph 9 of the Complaint is as partially quoted, but they further deny that it is material to the issue of the ownership of the subject matter of this suit or that by said Act the State of Florida was vested with ownership of the property or land involved in this suit.

8. Defendants admit the allegations of paragraph 10 of the Complaint.

9. Defendants admit the allegations of paragraph 11 insofar as it quotes Section 253.04, Florida Statutes, but deny that said statute is broad enough or intended to cover the lands and the property thereon which are the subject matter of this suit.

10. The defendants admit that Section 821.20, Florida Statutes, is the law of Florida and admit that as alleged in parargaph 12 it is true, but further allege that said law is not applicable in this cause and that said law refers specifically and expressly to lands within the physical limits of the State of Florida and not to the navigable waters one one-half or two miles in the Gulf of Mexico.

11. Defendants admit the allegations of paragraph 13 of the Complaint, but affirmatively allege that the defendants have obtained quit-claim and abandonment from the United States Navy and that the United States Navy is a branch of the United States Government, from the United States Corps of Engineers and that said Corps is a branch of the United States Government, and from the United States Coast Guard, a branch of the United States Government; and that further, the defendants affirmatively allege that they have made and posted a $25,000.00 bond with the United States Corps of Engineers to indemnify the general public from any damage or hazard to navigation, and further allege that they have taken and retained possession of the vessel "MASSACHUSETTS" and properly marked off the area in accordance with the prescribed rules of

the United States Coast Guard and of the United States Corps of Engineers and under their direction.

12. Defendants admit the allegations of paragraph 14 of the Complaint.

13. The defendants admit that Section 370.02, Florida Statutes, is the law of Florida but deny that said section charges the State Board of Conservation with the duty to preserve, protect and manage fishing resources, but allege that it charges them with this duty concerning fisheries, and that this section of the law is not applicable to this cause of action.

14. (Stricken.)

15. That the defendants admit so much of paragraph 17 of the Complaint that alleges that they have undertaken certain operations in connection with the vessel "MASSACHUSETTS", but deny that said vessel is within the territorial boundaries of the State of Florida as defined in the Constitution and the Submerged Land Act of the Congress of the United States and demand strict proof thereof.

16. The defendants deny that the operations as allege constitute any trespass against the lands and waters of the State of Florida, the Trustees of the Internal Improvement Fund of the State of Florida, or any other sovereign body or person, and deny that the defendants are interfering with or will interfere with the marine life in the waters of the State of Florida to the detriment of the people of the State of Florida.

17. The defendants deny the allegations of paragraph 19 of the Complaint insofar as said allegations claim destruction of fishing in and around said vessel, but on the contrary, affirmatively allege that the operation of the defendants will, in fact, improve the attraction to fish and the area as a fishing attraction.

18. The defendants deny each any every allegation of paragraph 20 of the Complaint and specifically allege that there has been no assertion or claim of right, title or interest by the State of Florida, or any of its branches in and to said vessel prior to the filing of this suit; and further, the defendants allege that they have good right to salvage and remove the said vessel.

19. The defendants deny each and every allegation of paragraph 21 of the Complaint and further allege that any assertion and exercise of jurisdiction, ownership or control over wrecks, sunken ships and other properties as alleged, is without lawful authority and contrary to law.

20. As to the allegations of paragraph 22 of the Complaint, defendants deny any trespass and deny that the operation begun and contemplated by the defendants will destroy any landmark, habitat for fishes and tourist attraction, and further deny that such operation will cause irreparable damage and injury. The defendants further allege that their operation will result in no detriment and damage to the State of Florida and its citizens.

21. That by way of affirmative answer, the defendants say that the completion of the operation will result in an improved fishing area, an increase in the lure to fishes and that no disturbance will be resulting to the landmark or historical attraction.

WHEREFORE, the defendants pray that the Complaint be dismissed at the cost of the plaintiffs.

JONES AND HARRELL,
RICHARD H. MERRITT,
Attorneys for Defendants.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR ESCAMBIA COUNTY.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Plaintiffs,

versus

MASSACHUSETTS COMPANY, a joint venture composed of Southern Scrap Material Company, Ltd., M. D. Friedman Company, a Corporation, and Eastern Scrap and Salvage Company, a Corporation,

Defendants.

FINAL DECREE.

The original plaintiffs in this suit are the State of Florida, the Trustees of the Internal Improvement Fund of the State of Florida, the State Board of Conservation of the State of Florida, and the Attorney General of the State of Florida. Upon their petition for intervention,

the Court has also permitted to be joined as parties plaintiff the Pensacola Sports Association and the Pensacola Anglers and Hunters Club, both non-profit corporations interested in sport fishing.

The defendant is the Massachusetts Company, a joint venture composed of Southern Scrap Material Company, Ltd., M. D. Friedman Company, a corporation, and Eastern Scrap and Salvage Company, a corporation.

There is no dispute that the Court has jurisdiction of the parties and of the subject matter of this suit.

Plaintiffs seek to enjoin the defendant from trespassing upon the lands of the plaintiffs and from removing or attempting to remove from its present location the battleship *Massachusetts* (or what remains of it), which lies sunken in the Gulf of Mexico off the coast of Escambia County in territorial waters of the State of Florida. In order to preserve the subject matter of the suit intact until a final disposition could be made, the Court has heretofore issued a temporary injunction against continued operations of the defendant except such as might be necessary to comply with the requirements of a bond, posted by the defendant with the United States Corps of Engineers to indemnify against its creation of a hazard to navigation in its work on the sunken ship.

This suit involves questions of law that have in greater part not been presented or settled in this state. Counsel on both sides have made an able presentation of the evidence and have, at the request of the Court, submitted thorough briefs of the law that have been most helpful. They are to be commended for their diligence.

Briefly, the facts before the Court are these:

The United States battleship *Massachusetts*, after first being used for coast artillery target practice, was scuttled and sunk in the Gulf of Mexico, approximately 1.2 miles off the entrance to Pensacola Bay, Escambia County, Florida, in the year 1922. It has remained there ever since, largely undisturbed except by action of wind and water, which have gradually caused it to sink deeper and deeper into the sand bottom. A portion of the gun turrets is still visible above the surface of the water. The sunken battleship is in such condition that it could not be restored to use as a vessel. It is, however, a haven for small marine life and therefore attracts larger fish that feed upon such organisms. This, in turn, has made the site where the vessel lies a favorite fishing spot, so that it has over the years attracted and still does attract large numbers of anglers from the local community and from distant places. During the past few years, at least, relatively small parts of the ship's brass and fittings have from time to time been removed by individuals not parties to this suit.

There have been efforts to organize the salvage of the sunken ship at times in the past, but all proved abortive until the venture in which the defendant is now engaged. In the month of August, 1956, the defendant, after preparations extending over the last year or two and involving the outlay of several thousand dollars in expense, secured a navigational permit from the United States Corps of Engineers and commenced salvaging the battleship. Incident to the beginning of the work, the defendant took possession of the ship by marking it with buoys and lines. Within a few days thereafter this suit was filed and, after notice and hearing, the temporary injunction issued.

The evidence at final hearing shows that the former owner of the battleship, the United States, has left it undisturbed for many years, and the Court finds that it was abandoned many years before this suit was begun. A telegram from the Secretary of the Navy, admitted in evidence, announces such abandonment, although it does not state the date of abandonment.

Upon the basis of the evidence, the Court finds and will treat the *Massachusetts* as an abandoned, sunken wreck of a ship lying in navigable waters of the Gulf of Mexico within the territorial limits of the State of Florida, subject to the laws of the State of Florida and the jurisdiction of this Court, and in the possession of the defendant. At the outset, it should be stated that the Court finds no grounds upon which to enjoin the alleged trespass that exist independently of the right of property in the sunken battleship.

Three primary questions are raised in this proceeding:

1. Does the State of Florida, by reason of its ownership or control of the bottom lands upon which the *Massachusetts* lies, have a title to the wrecked ship superior to that of the defendant?

2. Does the law of Florida prohibit the taking or salvaging of the wrecked ship by the defendant?

3. Has the long continued use of the site of the wrecked ship by the public for fishing created a prescriptive right that debars the defendant from disturbing it?

After careful consideration of the briefs submitted by the parties and a search of the available authorities, the Court is impelled to the conclusion that each of these questions must be answered in the negative and the plaintiffs' prayer for a permanent injunction denied.

Upon the first question, plaintiffs contend that the State of Florida owns the bottom land upon which the wrecked ship is resting and that title to personal property abandoned upon lands owned by the state is vested in the state. Under the plaintiffs' theory, the defendant is a trespasser upon state property and, as a trespasser, cannot by taking possession of the abandoned hulk gain any rights in it as against the state. Plaintiffs cite two cases in support of this theory, *Barker v. Bates* (Mass., 1832), Pickering 255, 23 Am.Dec. 678,682; and *Mitchell v. Oklahoma Cotton Growers' Association*, 108 Okal. 200, 235 Pac. 597. Neither of these cases, however, involved a wrecked vessel abandoned in navigable waters. The *Barker* case dealt with a stick of timber thrown up on the shore, and the *Mitchell* case was concerned with cotton lodged upon property of the plaintiff during a flood. There is substantial authority that even in this situation the finder of lost property would have priority over the owner of the realty on which it was found, *Bridges v. Hawkesworth*, 21 L.J. (Q.B.) 75; *Hamaker v. Blanchard*, 90 Fa. 377, 35 Am.Rep. 664, the rule recited in many casese being that the finder of lost property is entitled to it as against all the world except the true owner, regardless of where it is found. In no case has the court found any decision holding that a wrecked ship lying in navigable waters becomes the property of the owner of the bottom land, whether that owner be the sovereign or a private individual. All of the cases on the subject found by the court hold that a wrecked ship, abandoned

in navigable waters, has no owner and belongs to the salvor. See, for example, In Re Highland Nav. Corp. (D.C.N.Y. 1928), 24 F 2d 582, *Aff'd* (C.C.A.) Pet. of Highland Nav. Corp., 29 F.2d 37; and *Thompson v. U. S.* (1929), 62 Ct. Cl. 516. In the absence of a statute on the subject, the authorities appear, therefore, to support the view that the wrecked ship would become the property of the first person or party reducing it to possession. See *Howard v. Sharlin*, (Fla. 1952), 61 So. 2d 731.

Upon the second question, plaintiffs urge that two early English statutes establish the state's title to the abandoned property involved in this suit, the statute of 3 Edward I, Chapter 4, which reads:

> "Concerning Wrecks of the Sea, it is agreed, that where a Man, a Dog, or a Cat escape quick out of the Ship, that such Ship nor Barge, nor any Thing within them, shall be adjudged wreck: (2) but the goods shall be saved and kept by View of the Sheriff, Coroner or the King's Bailiff, and delivered into the Hands of such as are of the Crown, where the Goods were found; (3) so that if any sue for those Goods, and after prove that they were his, or perished in his keeping, within a Year and a Day, they shall be restored to him without Delay; and if not, they shall remain to the King, and be seized by the Sheriffs, Coroners and Bailiffs, and shall be delivered to them of the Town, which shall answer before the Justices of the Wreck belonging to the King."

and the statutes of 17 Edward II, chapter II, which provides:

> "Also the King shall have Wreck of the Sea throughout the Realm, (2) Whales and great Sturgeons taken

> in the Sea or elsewhere within the Realm, (3) except in certain Places privileged by the King."

The term "wreck of the sea" as used in those statutes did not, however, refer to a wrecked ship but to wrecked goods. Nor does the term as used in the statutes include even goods if they are lying at the bottom of the sea. Hale, in *DeJure Maris*, at page 37, defines "wreck" in the context of these statutes as follows:

> "The kinds of it are two: *First*, such as is called properly so, the goods cast upon the land or shore; *second*, improper, for goods that are a kind of sea waifs or stray; flotsam, jetsam and ligan."

The hulk *Massachusetts* fits none of these categories.

As against the plaintiffs' contention that Section 705.01—705.03, Florida Statutes 1955 (providing for the sale by the sheriff of "wrecked derelict goods, abandoned motor vehicle or other personal property" found in any county, with a portion of the proceeds to be paid to the salvor, a portion to the sheriff and county judge for their fees, and the balance to be paid into the state treasury unless claimed within a year and a day) constitutes recognition by the Florida legislature of the English statutes cited above, the defendant argues that more nearly applicable is Section 715.01, Florida Statutes, 1955 (providing that title to "all personal property found in or upon public conveyances, premises at the time used for business purposes, parks, places of amusement, public recreation areas and other places open to the public is hereby vested in the finder unless the same be called for or claimed by the rightful owner thereof within six months after the finding . . ."). The court recognizes

the apparent conflict between these statutes so far as they may apply to the present case. In such a situation the latest expression of the legislative will would normally be controlling and the later statute (Section 715.01, enacted in 1967, as against Sections 705.01-705.03, last amended in 1943), would be given effect. The court doubts that the legislature had in mind the particular problem presented in the present case when either of these statutes was enacted. It seems clear that Section 705.01-705.03 cannot be regarded as overturning the settled rule of law that a wrecked ship abandoned in navigable waters becomes the property of the first taker.

Concerning the third question, it is argued that the long continued use of the site of the abandoned ship by members of the public as a fishing spot has established a prescriptive right that precludes the defendant from disturbing or removing the hulk. Unfortunately, the plaintiffs and the court have been unable to find any authority that would support this view; and the fact is that any member of the public has a right to travel in or upon navigable waters so long as he does not violate the maritime law. Nowhere has the court found the exercise of this right advanced as a basis for prohibiting the enterprise upon which the defendant is embarked.

In this proceeding the burden is upon the plaintiffs to establish their right to the injunctive relief sought. Upon a careful consideration of the evidence and the applicable law, the court cannot find that the plaintiffs have met this burden. While the court recognizes the interest that members of the public, particularly those who enjoy fishing, feel in this matter, this court is under a duty to protect individual rights as well as those of the state and the general public. In the absence of a valid legislative enactment, none of these parties should be deprived of a previously existing right at the caprice of a court of justice.

It is thereupon

ORDERED, ADJUDGED AND DECREED that the temporary injunction heretofore issued in this cause be, and it is hereby, dissolved; and that the complaint be, and it is hereby, dismissed at the cost of the plaintiffs.

DONE AND ORDERED at Pensacola, Florida, this 8th day of September, 1956.

(S.) H. B. CROSBY,
CIRCUIT JUDGE.

JAMES LESLIE BONNELL, having been duly sworn, was called as a witness by Mr. Harrell and testified as follows:

DIRECT EXAMINATION.

BY MR. HARRELL:

Q. What is your name?

A. James Leslie Bonnell.

Q. Mr. Bonnell, by whom are you employed?

A. By the Massachusetts Company.

Q. Have you had occasion to do any salvage operations on the vessel Massachusetts?

A. I have.

Q. When did you commence work on this vessel, Mr. Bonnell?

A. You mean actual salvage or the first preliminary survey?

Q. The first preliminary survey.

A. The 9th of May of this year.

Q. When did you actually begin salvage?

A. The 13th of August of this year.

Q. When I say you actually commenced, without going into detail, did you take possession of the ship?

A. I did.

Q. Did you mark the area in accordance with Coast Guard rules?

A. I did.

Q. Did you post bond with the U. S. Corps of Engineers?

A. I did.

MR. McLANE:

We object to this testimony as irrelevant and immaterial.

COURT:

The objection is overruled.

Q. You obtained permission from the U. S. Corps of Engineers to begin your salvage operations on the Massachusetts?

A. I did.

MR. McLANE:

We object. The written permit from the U. S. Engineers would be the best evidence.

Q. I will ask you this: Did you receive a letter from Harold E. Bisport, Colonel, Corps of Engineers, dated 16 August 1956?

A. I did.

Q. Subsequent to that time did you post a $25,000.00 indemnity bond with the Corps of Engineers?

A. I did.

Q. During the course of your operations in and around the vessel Massachusetts have you had occasion to ob-

serve anyone not within your employ carrying on any operations out there, Mr. Bonnell?

A. Yes, I did on one occasion.

Q. What did you see?

A. Three boys on a boat with aqualungs bringing up brass pipe, port lights, and valves from inside of the vessel.

MR. McLANE:

We object as being irrelevant and immaterial. If it please the Court, we don't want to have to object each time to this type of question.

COURT:

The Court will observe that you have preserved your objections. This objection will be overruled.

Q. Did you see the amount of material they had salvaged?

A. They had it piled in a heap on the boat.

Q. What is your estimate of the amount?

A. I would say about 300 pounds.

Q. Was this the boat of Mr. Welker or some other Boat?

A. It was not Mr. Welker's boat, at least not the boat he has now. It was a smaller boat.

Q. Do you know Mr. Welker?

A. Yes, sir.

Q. Have you employed Mr. Welker?

A. I hired his boat and he came with it. I didn't employ him directly.

Q. Was Mr. Welker in that group you saw?

A. No, sir.

Q. I believe you stated that you had taken possession of the vessel Massachusetts?

A. That is true.

Q. Had you sent your divers down in connection with that possession?

A. I have.

Q. Have you ever at any time since the beginning of your salvage operation relinquished possession of the ship?

A. I have not.

Q. Have you continued to do the work out there in accordance with the terms of the temporary injunction granted by the Court?

A. I have.

Q. Are your buoys still out there?

A. They were at 10:00 o'clock this morning.

Q. When was the last time you were out there?

A. Last Friday.

Q. Have your men been out there since then?

A. Yes, sir. I have a radio, and I had a report just before 10:00 o'clock that the buoys were still in position.

Q. I believe you are superintendent of the operation?

A. I am.

MR. MERRITT:

We would like to introduce this letter of 16 August 1956 as Defendant's Exhibit "A". This was introduced as Exhibit "A" at the temporary hearing, but we want to be sure it is in the record.

COURT:

That is the letter you referred to this morning?

MR. MERRITT:

Yes, sir.

COURT:
All right.

Q. At the time you took possession of this vessel, Mr. Bonnell, was anyone else in actual possession of the vessel?

A. No. I saw no one in the vicinity.

* * * * * * * * * *

STANLEY DIEFENTHAL, a witness on behalf of the defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. HARRELL:

Q. What is your name?

A. Stanley Diefenthal.

Q. Are you connected with the Massachusetts Company?

A. Yes, sir.

Q. What is the nature of your connection?

A. I am executive vice-president of one of the corporations forming the Massachusetts Company.

Q. What corporations form that company?

A. Southern Scrap Company, of New Orleans; M. D. Friedman Company, of Portsmouth, Ohio; Eastern Scrap and Salvage Company, of Trenton, New Jersey.

Q. When did you first begin your investigation of the salvage of the Massachusetts?

A. Sometime during the year 1952.

Q. What did you then do?

A. The existence of the Massachusetts was brought to my attention by Mr. M. D. Friedman, who approached me as to the advisability of going into a joint venture of salvaging the Massachusetts.

MR. McLANE:

We object to any testimony regarding what he approached him with.

COURT:

The objection is overruled.

A. He approached me and asked if I would be interested in going into a joint venture of salvaging the Massachusetts, explaining to me what—

MR. McLANE:

We move the Court to strike the testimony regarding the explanation.

COURT:

The portion beginning "explaining to me **" will be stricken.

A. He showed me a letter he had received from the Assistant Secretary of the Navy authorizing him to proceed with the salvage.

MR. McLANE:

We move the Court to strike this testimony.

COURT:

The motion is granted. The testimony relating to the letter from the Secretary of the Navy and its contents is stricken.

MR. HARRELL:

We would like to introduce and we proffer to prove by the letter executed by John T. Koehler, Assistant Secretary of the Navy, on 10 April, 1961, that the U. S. S. Massachusetts had been stricken from the list of U. S. Naval vessels and at that time abandoned by the Navy.

MR. McLANE:

We object. There is no showing of privity between the company to whom it was addressed, the Pinto Islands Metals Company, and any defendant to this cause.

COURT:

Mr. Harrell, miscellaneous correspondence between strangers to this suit will not be admitted. The objection is sustained.

* * * * * * * * *

Q. How long have you been actively interested in this project?

A. Since sometime in the year 1952.

Q. What have you done in connection with getting the project under way?

A. During the latter part of 1952 or early 1953 I employed a diver to make a survey of the Massachusetts. During 1954 we brought over from Germany a man who claimed to be a salvage expert and who himself made an examination of the Massachusetts. Early this year we took samples of steel from the hull of the Massachusetts and a number of different places and sent them off for analysis, and thereafter proceeded with salvage work. I made a trip to Germany in May of this year to engage—

MR. McLANE:

This is immaterial, it seems to us. What he actually did on the spot is one thing; the fact that he went to Germany is another.

COURT:

The objection is overruled.

A. I went to Germany in May of this year to engage the assistance of a salvaging firm there who had just completed salvage of the Bismarck and the Turpitz in the North Sea. They granted us technical help, men who acted as advisors in our present work on the Massachusetts.

Q. After that did you get in touch with the Corps of Engineers with reference to the salvage of this ship?

A. Yes, I did.

Q. In what way did you get in touch with them?

A. I made a telephone call to Mr. Adams of the Corps of Engineers in Mobile and requested that in accordance with previous correspondence he issue a permit for the salvage of the Massachusetts. The permit was to keep a floating plant at the site. Mr. Adams agreed to do so upon posting of a $25,000.00 surety bond.

MR. McLANE:

We object to that testimony.

COURT:

The portion of the testimony regarding Mr. Adams' agreement is stricken. The objection is sustained to that extent.

Q. After you got in touch with Mr. Adams, did you post the surety bond?

A. Subsequent to my conversation with Mr. Adams we posted a $25,000.00 surety bond to guarantee that our operations would not be a hazard to navigation.

Q. Did you subsequently commence operations on the ship?

A. In a few days we began blasting. We had been operating, setting buoys, etc., for several days before that time.

Q. Have you ascertained the amount of money that you have spent in connection with this project to date?

MR. McLANE:

We object. That is irrelevant and immaterial.

COURT:

The objection is overruled.

A. I have to an approximate figure.

Q. Please state how much your company has spent?

A. May I consult my memorandum? Our books show that from the beginning of this specific operation which I think began around the first or second of August, we have spent some $8,988.00. This, of course, does not reflect the entire expenditures which we have obligated outselves for in other substantial sums. And there are other substantial expenditures which we have made in the past which are not reflected by the books of this particular venture. The sums that we have obligated ourselves for with respect to this particular venture are $21,200.00. We have obligated ourselves to employ a diver for a minimum of 30 days for $2600.00.

Q. Has he actively been working on the job?

A. Yes.

Q. At what rate of pay?

A. $2,000.00 for the 30 days plus $600.00 living expenses.

MR. McLANE:

Same objection to the entire line of question regarding the expenditures.

COURT:

Same ruling.

A. We have obligated ourselves to the George Whiteman Towing Company for the rental of a tug for 30 days for $200.00 per day, a total of $6,000.00. We have obligated ourselves to Crescent Towing and Salvage Company of New Orleans to tow our floating crane to Pensacola and back again, for $9,600.00. We have obligated ourselves to pay passage and expenses of the German advisory group who are here, which I estimate would be in the neighborhood of $3,000.00 up to this moment. With regard to our past expenses, it cost approximately $1500.00 to bring the prior German salvage expert to this country and return him to Germany. I say approximately because one of the other venturers expended this sum and it has not been reported to us. We expended the sum of approximately $2400.00 in taking samples from the wreck during April and May of this year, samples of steel. We expended in the past on two occasions a total sum of approximately $2,000.00 in employing divers and boats to make exploratory trips to the wreck.

Q. Mr. Francis Taylor testified that you had spent approximately $1,000.00 with one of his companies. Is that included?

A. If he has rendered his invoice it would probably be reflected here. We are incurring additional expenses every day. There is some lapse of time afterward before invoices are paid and entered on our books.

Q. From your memorandum, how much money have you spent or obligated yourself to spend in connection with this operation?

A. From this memorandum we have already out-of-pocket expense of $8,988.00. This was up until a few days ago; I don't know what it is now. We have obligations in the amount of $21,200.00. And we have had expenses in the amount of approximately $6,000.00.

• • • • • • • •

END OF TESTIMONY.

APPENDIX "C".

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR THE ESCAMBIA COUNTY, FLORIDA. IN CHANCERY.

No.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Plaintiffs,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., M. D. FRIEDMAN COMPANY, a corporation and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Defendants,

PENSACOLA SPORTS ASSOCIATION, a non-profit corporation, and PENSACOLA ANGLERS and HUNTERS CLUB, a non-profit corporation,

Intervenors.

NOTICE OF APPEAL.

The plaintiffs, THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, LEROY COLLINS, as Governor of the State of Florida, RAY E. GREEN, as Comptroller of the State of Florida, J. EDWIN LARSON, as Treasurer of the State of Florida, RICHARD W. ERVIN, as Attorney General of the State of Florida, and NATHAN MAYO, as Commissioner of Agriculture of the State of Florida, composing the TRUS-

TEES OF THE INTERNAL IMPROVEMENT FUND of the State of Florida, a component governmental agency of the State of Florida; LEROY COLLINS, as Governor of the State of Florida, R. A. GRAY, as Secretary of State of the State of Florida, RICHARD W. ERVIN, as Attorney General of the State of Florida, RAY E. GREEN, as Comptroller of the State of Florida, J. EDWIN LARSON, as Treasurer of the State of Florida, THOMAS D. BAILEY, as State Superintendent of Public Instruction of the State of Florida, and NATHAN MAYO, as Commissioner of Agriculture of the State of Florida, constituting the STATE BOARD OF CONSERVATION of the State of Florida, a component governmental agency; and RICHARD W. ERVIN, as Attorney General of the State of Florida, in his official capacity as Attorney General of the State of Florida, take and enter their appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court of the First Judicial Circuit in and for Escambia County, Florida, bearing date of September 8, 1956, entered in the above styled cause and recorded in the records of said court in Chancery Order Book 53, page ....., and all parties to said cause are called upon to take notice of the entry of this appeal.

(S.) RICHARD W. ERVIN,
(Richard W. Ervin),
Attorney General,

(S.) RALPH M. McLANE,
(Ralph M. McLane),
Assistant Attorney General,

(S.) JOHN D. MORIARTY,
(John D. Moriarty),
Assistant Attorney General,
Attorneys for Plaintiffs.

APPENDIX "D".

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR ESCAMBIA COUNTY, FLORIDA. IN CHANCERY.

No. 39570.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Plaintiffs,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., M. D. FRIEDMAN COMPANY, a corporation, and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Defendants,

PENSACOLA SPORTS ASSOCIATION, a non-profit corporation, and PENSACOLA ANGLERS AND HUNTERS CLUB, a non-profit corporation,

Intervenors.

ASSIGNMENT OF ERRORS AND DIRECTIONS TO THE CLERK.

The Plaintiffs, The State of Florida, by and through Richard W. Ervin, as Attorney General of the State

of Florida, Leroy Collins, as Governor of the State of Florida, Ray E. Green, as Comptroller of the State of Florida, J. Edwin Larson, as Treasurer of the State of Florida, Richard W. Ervin, as Attorney General of the State of Florida, and Nathan Mayo, as Commissioner of Agriculture of the State of Florida, composing the Trustees of the Internal Improvement Fund of the State of Florida, a component governmental agency of the State of Florida; Leroy Collins, as Governor of the State of Florida, R. A. Gray, as Secretary of State of the State of Florida, Richard W. Ervin, as Attorney General of the State of Florida, Ray E. Green, as Comptroller of the State of Florida, J. Edwin Larson, as Treasurer of the State of Florida, Thomas D. Bailey, as Superintendent of Public Instruction of the State of Florida and Nathan Mayo, as Commissioner of Agriculture of the State of Florida, constituting the State Board of Conservation of the State of Florida, a component governmental agency; Richard W. Ervin, as Attorney General of the State of Florida, in his official capacity as Attorney General of the State of Florida; and Intervenors, Pensacola Sports Association, a non-profit corporation, and Pensacola Anglers and Hunters Club, a non-profit corporation, file this their Assignment of Errors and Directions to Clerk, relating to the Notice of Appeal entered herein on September 10, 1966, as follows:

ASSIGNMENT OF ERRORS.

1. The Court erred in refusing to permit the plaintiffs' witness, Van H. Ferguson, to testify concerning

the construction placed upon the applicable statutes by the Trustees of the Internal Improvement Fund of the State of Florida, regarding the issuing of permits and licenses to explore wrecks and the like lying upon the water bottoms of the State of Florida, and the plaintiffs' proffer of said testimony.

2. The Court erred in permitting defendants to introduce evidence concerning the posting of a $25,000 indemnity bond with the United States Corps of Engineers.

3. The Court erred in permitting the defendants to introduce evidence with reference to pilfering of the "Massachusetts" by persons not parties to this suit.

4. The Court erred by permitting the defendants to introduce testimony relating to preliminary matters undertaken by the defendants prior to beginning of operations for dismantlement of the "Massachusetts".

5. The Court erred in permitting the defendants to introduce evidence with reference to alleged monetary obligations and expenditures in connection with the dismantlement of the "Massachusetts".

6. The Court erred in entering the Final Decree herein, dated September 8, 1956, recorded in Chancery Order Book No. 53, page .....

7. The Court, by its Order, erred in dismissing the Complaint.

8. The Court erred in denying the plaintiffs a permanent injunction.

9. The Court erred in applying the law to the facts in this cause.

DIRECTIONS TO CLERK.

The Clerk of the Circuit Court is requested to transmit to the Clerk of the Supreme Court, pursuant to Rule 33.2 of the Rules of the Supreme Court, all the original papers in this action, properly indexed as required by Rule 32.5 of the Rules of the Supreme Court, together with a certified copy of said Final Decree dated September 8, 1956, and a certified copy of the Notice of Appeal herein filed on September 10, 1956, this Assignment of Errors and Directions to Clerk of the Circuit Court, and certification by the Clerk of the Circuit Court identifying the papers with reasonable definiteness.

(S.) RICHARD W. ERVIN,
(Richard W. Ervin),
Attorney General,

(S.) RALPH M. McLANE,
(Ralph M. McLane),
Assistant Attorney General,

(S.) JOHN D. MORIARTY,
(John D. Moriarty),
Assisstant Attorney General,
Attorneys for Plaintiffs.

J. B. HOPKINS,
Attorney for Intervenors.

314 South Baylen Street,
Pensacola, Florida.

CERTIFICATE OF SERVICE.

THIS IS TO CERTIFY that a copy of the foregoing Assignment of Errors and Directions to the Clerk have been furnished Honorable R. H. Merritt, Box 985, Pensacola, Florida, and Honorable Joe J. Harrell, 1611 E. Baars Street, Pensacola, Florida, Attorneys for defendants, by mail, this 14th day of September, 1956.

(S.) JOHN D. MORIARTY.

APPENDIX "E".

IN THE SUPREME COURT OF THE STATE OF FLORIDA.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Appellants,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., M. D. FRIEDMAN COMPANY, a corporation, and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Appellees.

MOTION FOR SUPERSEDEAS BOND.

Comes now the appellees in accordance with the requirements of F.S.A. 59.14 and Rule 19 of the Supreme Court Rules and move the Court to require the appellants to file a supersedeas bond to indemnify the appellees for any damages they might receive because of the taking of said appeal, and for grounds of said motion, say:

1. That on September 6, 1956, the Honorable Harold B. Crosby entered an order dissolving the temporary injunction previously ordered by him in said cause.

2. That the appellees have obligated themselves by contract for the services of divers and for the use of a tugboat and for other expenses on a 30 day charter basis, which said contract provides that the appellees will pay said sums whether or not the services of said divers and tugboat are used.

3. That in addition thereto, the appellees have made numerous other agreements purchased supplies and obligated themselves to pay for supplies presently being shipped to Pensacola and they are suffering great damages because of the delay occasioned by the appeal taken in this cause.

4. That the sworn testimony taken in said cause which was unrefuted estimated that the appellees have now spent over $9,000.00 in conneetion with this venture and that the expenses which they have obligated themselves to pay are daily increasing by not less than $600.00 per day for each day of delay.

5. That in addition to the foregoing, the weather is now conducive to salvage operations but any delay taken in this cause may greatly increase the expenses and damages of the appellees.

6. That the market for alloy steel and other materials which the appellees are salvaging is extremely high at this time and if said market for any reason is depressed in the future the decrease in the price of the above named products will cause the appellees to suffer further damage.

RICHARD H. MERRITT,
(Richard H. Merritt),
JONES AND HARRELL,
By JOE J. HARRELL.
Attorneys for Appellees.

STATE OF FLORIDA,
COUNTY OF ESCAMBIA.

Before the undersigned authority this day personally appeared RICHARD H. MERRITT and JOE J. HARRELL, who after being by me first duly sworn, depose and say that the matters and things alleged in the foregoing motion to the best of their knowledge are true and correct.

(S.) RICHARD H. MERRITT,
(S.) JOE J. HARRELL.

SWORN to and subscribed before me this 10th day of September, 1956.

(S.) EDITH P. LISERBY,
Notary Public.

My commission expires: 9-1-58.

APPENDIX "F".

IN THE SUPREME COURT OF FLORIDA.

JUNE TERM, A. D. 1956.

TUESDAY, SEPTEMBER 11, 1956.

AN APPEAL FROM THE CIRCUIT COURT OF ESCAMBIA COUNTY, FLORIDA, IN CHANCERY.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Appellants,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., M. D. FRIEDMAN COMPANY, a corporation, and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Appellees.

Upon an inspection of a certified transcript of those portions of the record relative to the decree appealed from, and of the original file of the Circuit Court in this cause brought here upon an application for an order of supersedeas in said cause, it is hereby ordered that the appeal entered in this cause in the Circuit Court of Escambia County, in Chancery, on the 10th day of September, 1956, shall have the effect and force of and do operate as a supersedeas of the decree appealed from upon the appellant giving

or causing to be given a bond in the sum of $25,000 with or without surety at option of appellant, conditioned that the appellant shall pay the costs of the action, costs of the appeal, interest (if chargeable), damages for delay, use, detention, and depreciation of any property involved, said bond to be approved by the Clerk of the Circuit Court for Escambia County.

It is further ordered that the record and briefs in this cause be filed in this Court on or before September 24th, 1956, and said cause set down for oral argument at 9:00 o'clock A. M. on September 24th, 1956.

A True Copy.

TEST:

(Seal)

GUY T. McCORD,
Clerk Supreme Court.

APPENDIX "G".

IN THE SUPREME COURT OF FLORIDA.

JUNE TERM, A. D. 1956.

EN BANC.

CASE No. 27,838.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Appellants,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, N. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Appellees.

Opinion filed November 16, 1956.

An Appeal from the Circuit Court for Escamba County, H. B. Crosby, Judge.

Richard W. Ervin, Attorney General, Ralph M. McLane and John D. Moriarty, Assistant Attorneys General, for Appellants.

R. H. Merritt and Joe J. Harrell, for Appellees.

J. B. Hopkins, for Intervenors.

ROBERT, J: This controversy had its inception in activities of the appellee, the Massachusetts Company, looking toward the "salvage" of the old battleship *Massachusetts*, which lies sunken in the Gulf of Mexico off the coast of Escambia County in the territorial waters of the State of Florida. The State of Florida, by its Attorney General, filed the instant suit to enjoin the Company from proceeding with such activities. The Chancellor, on the basis of the pleadings and evidence adduced before him, found that the State had failed to establish a right to the injunctive relief sought and entered a decree in favor of the Company. The State has appealed.

The facts, as found by the Chancellor in his decree, are as follows:

> "The United States battleship *Massachusetts*, after first being used for coast artillery target practice, was scuttled and sunk in the Gulf of Mexico, approximately 1.2 miles off the entrance to Pensacola Bay, Escambia County, Florida, in the year 1922. It has remained there ever since, largely undisturbed except by action of wind and water, which have gradually caused it to sink deeper and deeper into the sand bottom. A portion of the gun turrents is still visible above the surface of the water. The sunken battleship is in such condition that it could not be restored to use as a vessel. It is, however, a haven for small marine life and therefore attracts larger fish that feed upon such organisms. This, in turn, has made the site where the vessel lies a favorite fishing spot, so that it has over the years attracted and still does attract large numbers of anglers from the local community and from distant places. During the past few years, at least, rela-

tively small parts of the ship's brass and fittings have from time to time been removed by individuals not parties to this suit.

"There have been efforts to organize the salvage of the sunken ship at times in the past, but all prove abortive until the venture in which the defendant is now engaged. In the month of August, 1956, the defendant, after preparations extending over the last year or two and involving the outlay of several thousand dollars in expense, secured a navigational permit from the United States Corps of Engineers and commenced salvaging the battleship. Incident to the beginning of the work, the defendant took possession of the ship by marking it with bouys and lines. Within a few days thereafter this suit was filed and, after notice and hearing, the temporary injunction issued.

"The evidence at final hearing shows that the former owner of the battleship, the United States, has left it undisturbed for many years, and the court finds that it was abandoned many years before this suit was begun. A telegram from the Secretary of the Navy, admitted in evidence, announces such abandonment, although it does not state the date of abandonment.

"Upon the basis of the evidence, the court finds and will treat the *Massachusetts* as an abandoned, sunked wreck of a ship lying in navigable waters of the Gulf of Mexico within the territorial limits of the State of Florida, subject to the laws of the State of Florida and the jurisdiction of this court, and in the possession of the defendant."

To these findings of fact made by the Chancellor, it might be added that the record shows that the wreck

of the vessel is not a navigational hazard and that, in addition to being a favorite fishing spot, it is a navigation aid for small boats. It has not sunk any deeper into the sand for the last six or seven years, the last appreciable sinking having followed a hurricane in 1948 It might also be noted that the Chancellor's finding that the Company "took possession of the ship by marking it with buoys and lines" is a conclusion of at least doubtful authenticity. Cf. *Eads v. Brazelton* (1861) 79 Am. Dec. 88; *Deklyn v. Davis* (1824) Hopk. Ch. 135, 2 N.Y. Ch. 369. But the point is not raised here, and it will be assumed for the purpose of this appeal that the Company has "possession" of the wreck sufficient to exclude other persons of the same class from interfering with the property.

The issue here is whether the State, in its sovereign capacity, has a possessory right or title to the wreck that cannot lawfully be interfered with by the Company The State contends, in substance, that under Sec. 2.01, Fla. Stat. 1955 (Act. of Nov. 6, 1829) the "common and statute laws of England which are of a general and not a local nature, . . . down to the fourth day of July, 1776, are declared to be of force in this state," unless inconsistent with the constitution and laws of the United States and the acts of the legislature of this state; that under the common law and statutes of England as they existed in 1776, wrecked and derelict property upon the sea belonged to the Crown unless claimed by an owner within a year and a day; that the state, in its sovereign capacity, succeeded to this prerogative right of the sovereign of England, when it adopted the common law; that no statute inconsistent with such prerogative right has been adopted in this state; but that, on the contrary, statutes have been enacted that are in accord with and in recognition of the common law. The State also con-

tends that the water bottom in question is designated "state land" by Section 253.03, Fla. Stat. 1955 and that the Company's activities violate Sections 821.19 and 821.20, Fla. Stat. 1955, prohibiting and defining "trespass" upon state lands. Other contentions not necessary to relate here are also made.

The Company contends that the wrecked vessel is not within the purview of the common law nor the statutes relied upon by the State as conferring upon the sovereign the prerogative right to wreck; and states in its brief that the case "turns on the law governing the rights of persons with respect to abandoned personal property." Most of its argument is directed to the latter point.

The Chancellor sustained the position of the Company as to the meaning of "wreck" and held that neither the common law, nor the statutes of England here relied upon (3 Edward I, Ch. 4, and 17 Edward II, Ch. 11) relating to "wreck of the sea," nor the law of Florida (Sections 705.01-03, Fla. Stat. 1955) relating to "wrecked derelict goods," vested in the sovereign any right to the wreck in question. His holding in these respects was based on the fact that "wreck of the sea," within the meaning of the English statutes cited above, must be "goods cast upon the land or shore", Hale's De Jure Maris, p. 37; and his opinion that Section 705.01, et seq., *supra*, was in apparent conflict with Section 715.01, Fla. Stat. 1955, vesting in the finder the title to personal property found in public places, so that the latter being the last enacted in point of time, would prevail over the former; and he concluded that "Section 705.01-705.03 cannot be regarded as overturning the settled rule of law that a wrecked ship abandoned in navigable waters becomes the property of the first taker." It was also his opinion that no grounds for enjoining the alleged

trespass existed, "independently of the right of property in the sunken battleship".

We will first consider the question of the right of the sovereign at common law, to goods found wrecked or derelict at sea, regardless of whether they were "cast upon the land or shore". The rule is stated in Carver's Carriage of Goods by Sea, 9th Ed., p. 580, as follows:

> "So where a ship is derelict, or where goods have been thrown out of a vessel to lighten her (jetsam), or have been sunk but tied to some floating mark to show the place (lagan), or have been washed out of the ship and remain afloat (flotsam), in those cases, also, the property belongs to the Crown in its office of Admiralty, unless the owner establishes his claim to it."

This statement is supported by the English cases on the subject. ". . . the common law gave as well wreck, *jetsam, flotsam*, and *lagan* upon the sea, as estrays . . . , treasure-trove, and the like to the King, because by the rule of common law, when no man can claim property in any goods, the King shall have them by his prerogative". Sir Henry Constable's Case, 5 Coke's Report 108 b, 77 Repr. 218, 223. "By the general law, all goods found afloat and derelict on the high seas belong, as droits, to the Crown, in its office of Admiralty." *The King v. Forty-Nine Casks of Brandy* (1836) 3 Hagg. Adm. 292, 166 Repr. 414. A wrecked vessel and its cargo, lying at the bottom of the sea, is a "derelict" which, if not claimed by the owner, at the end of a year, becomes a *droit* of the Crown in its office of Admiralty. H.M.S. *Thetis* (1835) 3 Hagg. 228, 166 Repr. 390, 391. See also the *Tubantia* (1924) p. 78, 91; *The King v. Two Casks of Tallow* (1837) 3 Hagg. Adm. 292,

166 Repr. 414; and The *Aquila* (1798) 1 C. Rob. 37, 165 Repr. 87, 91.

The difficulty which the Chancellor—and apparently the parties, also—has had with this question stems from a misunderstanding of the meaning and effect of the two English statutes cited above. The statutes of 3 Edward I. Ch. 4, (enacted in 1275) provides that:

> "Concerning Wrecks of the Sea, it is agreed, that where a Man, a Dog, or a Cat escape quick out of the Ship, that such Ship nor Barge, nor any Thing within them, shall be adjudged Wreck; (2) but the goods shall be saved and kept by View of the Sheriff, Coroner, or the King's Bailiff, and delivered into the Hands of such as are of the Crown, where the Goods were found; (3) so that if any sue for those Goods, and after prove that they were his, or perished in his keeping, within a Year and a Day, they shall be restored to him without Delay; and if not, they shall remain to the King, and be seized by the Sheriffs, Coroners, and Bailiffs, and shall be delivered to them of the Town, which shall answer before the Justices of the Wreck belonging to the King."

The statute of 17 Edward II, Ch. 11 (enacted in 1324) provides that:

> "Also the King shall have Wreck of the Sea throughout the Realm; (2) Whales and great Sturgeons taken in the Sea or elsewhere within the Realm; (3) except in certain Places privileged by the King."

These two statutes did not confer any new right upon the Crown. By the ancient Roman law and the early common law of England, the right of the sovereign to wrecked and derelict property on the seas was absolute, to the exclusion of the owner. See the note of The *Aquila, supra*, 165 Repr. 87, 91. But by the time of Eward I, this harsh rule had been softened and the owner could reclaim his property within a year and a day. The statute of 3 Edward I, Ch. 4, "was but a declaration of the common law against the opinion in Dr. and Stud. lib. 2 fo. 118, and if the owner dies, his executors or administrators may make their proofs." Constable's Case, *supra*, 77 Repr. 218, 222. Similarly, the declaration of the statute of 17 Edward II, *supra*, that "wreck of the sea" belong to the King "except in certain places Privileged by the King" was "but a declaration and an affirmation of the common law. For notwithstanding that stat. being made within time of memory, a man may prescribe to have wreck, . . ." Constable's Case, *supra*. And, of course, the King could grant the right to "wreck of the sea" to a subject, generally to the lord of a manor bordering on the sea. In fact, most of the cases in which "wreck of the sea" or *wreccum maris*, has been defined were concerned with the question of ownership of shipwrecked goods, as between the Crown and the lord of the manor, where the lord is claiming ownership of the goods either under a grant of wreck or by prescription.

In short, the statute of 3 Edward I, *supra*, was simply a declaration of the right of an owner to assert his ownership to shipwrecked goods within a year and a day—a right which already existed under the common law, not only as to technical "wreck of the sea" but also to goods of the character of *flotsam*, *jetsam*, and *lagan*. And the statue of 17 Edward II, *supra*, was mere-

ly a declaration of the privilege of acquiring a right to "wreck of the sea", in its technical sense, by prescription or usage, already existing under the common law. Constable's case, *supra*.

The Florida statute relevant to this particular point is Ch. 705, Fla. Stat. 1955, parts of which (Sections 4, 5 and 6) were enacted in 1850 as part of Ch. 344, Acts of 1850, and the remainder in 1859 as Ch. 1005, Acts of 1859, under the title "AN ACT for the protection and disposal of Wrecked and Derelict Goods in the State of Florida." It provides, in Section 1, that "Whenever any wrecked derelict goods shall be found in any county in this state, the county judge shall ascertain the amount and situation of the same, and by his written order shall cause the sheriff to take charge thereof and sell the same at public outcry, after giving a reasonable public notice of the time and place of such sale." Provision is made for the determination of a salvage award to be paid to the "salvors or persons finding and reporting such goods," and the balance of the proceeds of the sale (after deducting a commission to the sheriff and county judge) is to be held for the owner for "one year and a day" and thereafter paid into the state treasury, if no claimant appears. Sections 705.02 and 705.03, *supra*. It also provides for the punishment of any person who finds "wrecked *or derelict* goods and fails to report them to the county judge of the county wherein the same are found," Section 705.06, or who "secretes or appropriates the same to his own use . . ." Section 705.07. (Emphasis added.)

It should also be noted that, at the time of the enactment of Ch. 1005, Acts 1859, *supra*, provision had already been made for the taking up, for the benefit of the public treasury, of boats and vessels adrift (Act of Nov. 21, 1828), lumber adrift (Act of Jan. 8, 1853), now

Ch. 706, Fla. Stat. 1955, and estrays (Act of Feb. 12, 1833), now Ch. 707, Fla. Stat. 1955.

So the history of these various enactments shows the intention of the State to pre-empt for itself those fiscal prerequisites which, at common law, had been the prerogative right of the Crown. To interpret Ch. 705, *supra*, as applying only to goods which were, technically, "wreck of the sea" (that is, goods cast upon the shore) at common law, as the Company would have us do, we would have to hold that the statute, by implication, divested this state of a prerogative right of the Crown to which it succeeded when it became a sovereign state of this Union and adopted the common law of England as it existed in 1776. The statute did not do so expressly, nor is such a result necessarily implied. The statute must have been intended only to prescribe the procedure by which goods found wrecked or derelict in or upon the territorial waters of this state within the boundaries of any county of this state—whether technically "droits of admiralty" or "wreck of the sea" at common law—could be pre-empted on behalf of the state and the rights of the owner therein preserved. It had no more effect on the existing common law right of the state than did the statute of 3 Edward I, Ch. 4, *supra*, on the common law right of the Crown in this respect.

Nor do we think that Section 715.01, Fla. Stat. 1955, *supra*, had the effect of divesting or abrogating the state's prerogative right here in question. This statute confirms in the finder, after six months, the title to personal property found in public places; but we do not think it had the effect of abrogating the state's prerogative rights to wrecked and derelict goods of the kind here in question, any more than it divested the state and counties of their right to share in the proceeds of the sale of estrays, boats and vessels adrift, and lumber adrift, as provided for in

Ch. 706 and 707, *supra*. These rights could, of course, be divested or abrogated by statute; but unless the statute relied upon expressly so declares or unless this is a necessary inference from its provisions, we will not so interpret it. And we cannot read such a sweeping abrogation of existing governmental rights into Section 715.01, *supra*, which must have been intended as a declaration of the common law rights of the finder of lost property, with a limitation period of six months within which the owner would have the right to reclaim his property.

We conclude, therefore, that the wreck of the vessel is a "derelict" which, at common law, would below to the Crown in its office of Admiralty at the end of a year and a day, under the authority of the English cases above cited; that since the property was resting in territorial waters of the State of Florida and within the boundaries of Escambia County, See Section 7.17, Fla. Stat. 1955, it it within the purview of the common law and Ch. 705, *supra*, and belongs to the State in its sovereign capacity. See also "Submerged Lands (Tidelands) Act of 1953", 67 Stat. 29, also U.S.C.A. Title 43 Section 1301 et seq.

It might be noted that the administrative officers of this state have for many years so interpreted Ch. 705, *supra*, and related statutes. (See Section 253.03, Fla. Stat. 1955, designating state owned water bottoms as "state lands"; Section 821.19, ibid., prohibiting trespass upon state lands; and Section 821.20, ibid., defining "trespass" as, among others, "the use or removal of the soil of said land or anything except wild game in, on or under such soil, without written lease from the state."). While not binding on the court, such administrative interpretations are entitled to great weight and will not be departed from by the courts unless clearly erroneous or unauthorized. *Gay v. Canada Dry Bottling Co. of Florida, Inc.*, (1952) 69 So. 2d 788, 790.

The Company states in its brief that "If the law for which the appellants contend is applied in this case, then all of the settled law, maritime and property law of the United States and literally of the world will be upset." We do not find this theory of the law to be a new and startling one. As long ago as the year 1798, in The *Aquila, supra*, 1 c. Rob. 37, 165 Repr. 87, 89, we find a salvor attempting to claim the title, by right of occupancy, to the cargo carried in a ship found derelict at sea, where the ship was claimed and restored to the owner and the cargo remained unclaimed. Sir W. Scott, Judge of the Admiralty, said in that case:

> "It is certainly very true that property may be so acquired: but the question is, to whom is it acquired? By the law of nature, to the individual finder or occupant; But in a state of civil society, although property may be acquired by occupancy, it is not necessarily acquired to the occupant himself; for the positive regulations of the State may have made alterations on the subject; and may, for reasons of public peace and policy, have appropriated it to other persons, as, for instance, to the State itself, or to its grantees.
>
> "It will depend, therefore, on the law of each country to determine, whether property so acquired by occupancy, shall accrue to the individual finder, or to the Sovereign and his representatives? And I consider it to be the general rule of civilized countries, that what is found derelict on the seas, is acquired beneficially for the Sovereign, if no owner shall appear. Selden *(De Dom, Maris*, lib. i, c. 24) lays it down as a right annexed to sovereignty, and acknowledged amongst all nations ancient and modern. Loccenius (Lib. i, c. 7, 10) mentions it as an incontestable right of sovereignty in the north of Europe.

> Valin (Lib. iv, tit. 9, art. 26) ascribes the same right to the crown of France; and speaking of the rule in France, that a third shall be given to salvors, in cases of shipwreck, expressly applies the same rule to derelicts, as standing on the same footing. In England this right is as firmly established as any one prerogative of the crown. . . ."

For the reasons stated, we hold that the State of Florida, in its sovereign capacity, has a possessory right or title to the wreck of the *Massachusetts* superior to that of the Company, and that the lower court erred in refusing to enter a permanent injunction against the Company's interference with such title or possession.

Accordingly, the decree appealed from should be and it is hereby

Reversed.

THOMAS, HOBSON, THORNAL and O'CONNELL, JJ., CONCUR.

DREW, C.J., DISSENTS.

TERRELL, J., NOT PARTICIPATING.

DREW, C.J., Dissenting:

Although there is serious doubt of the applicability of the King's prerogative in wreck or derelicts through Section 2.01 Florida Statutes 1955[1], it is not necessary to belabor the point for there are two more specific Florida Statutes to consider—Ch. 705 and Section 715.01 Florida Statutes 1955. The scheme of Chapter 705, *supra*, is first announced in Section 705.01:

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[1] See, Russell v. 40 Bales of Cotton, 21 Fed. Cas. #12,154 (S.D. Fla., 1872); and see, the interpretation of Section 2.01 in Waller v. First Savings & Trust Co., 103 Fla. 1025, 1038, 138 So. 780 (1931); Banfield v. Addington, 104 Fla. 661, 140 So. 893, 899 (1932); and Ripley v. Ewell, 61 So. 2d 420 (Fla. 1952).

> "County judge to order sale.—Whenever any wrecked derelict goods, abandoned motor vehicle or other personal property shall be found in any county in this state, the county judge shall ascertain the amount and situation of the same, and by his written order shall cause the sheriff to take charge thereof and sell the same at public outcry, after giving a reasonable public notice of the time and place of such sale."

Then Section 705.2 grants a salvage to the finder out of the proceeds of the sale. Finally, Section 705.03 directs that the remaining sum, less certain costs, be held for a year and a day for the owner and if not then claimed be turned over to the state treasury.

> The other statute, Section 715.01, provides: "Title to personal property found in public places.—The title to all personal property found in or upon public conveyances, premises at the time used for business purposes, parks, places of amusement, public recreation areas and other places open to the public is hereby vested in the finder unless the same be called for or claimed by the rightful owner thereof within six months after the finding thereof."

The two statutes can be harmonized if one recognizes that the later statute, Section 715.01, operates only where personal property is found "in or upon public conveyances, premises at the time used for business purposes, parks, places of amusement, public recreation areas *and other places open to the public.*" (Emphasis supplied) Thus an area outside of "places open to the public" is left for the operation of Section 705. The facts of the present case bring it within the more specific operation of Section 715.01. I, therefore, conclude that the judgment of the circuit judge, which upholds the right of the finder against the claim of the state is correct.

APPENDIX "H".

IN THE SUPREME COURT OF FLORIDA.

No. 27,838.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Appellants,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, N. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Appellees.

PETITION FOR REHEARING.

The appellees file this their petition for rehearing, respectfully requesting this Honorable Court to reconsider its order filed herein on the 16th day of November, 1956, reversing the Final Decree of the Circuit Court of Escambia County, Florida, dated the 8th day of September, 1956. As grounds for rehearing, the petitioners respectfully suggest the following:

1. The decision apparently resulted from the Court's misunderstanding of the facts in this cause in the following particulars:

(a) That the property which is the subject matter of this suit is abandoned personal property.

(b) That the abandonment of the property which is the subject matter of this suit was an expressed abandonment by the United States Government.

(c) That the owner of the property was known at all times and was known to be the United States Government, a sovereign body not inferior to the sovereign State of Florida and that said owner abandoned the property to whomsoever cared to take it.

2. The Court in arriving at its decision overlooked or failed to consider the following:

(a) That the sovereign State of Florida had at all times known of the presence of the sunken property which is under consideration in this suit but had faied to exercise any claim whatsoever to the property until after the petitioners had expended large sums of money and had taken actual physical and exclusive possession of the subject property.

(b) That the State of Florida is now estopped to claim the property in question because of laches, and in effect because the State of Florida had itself abandoned its rights (if any such rights it ever had) by failing to make a claim to the "Massachusetts", which after being sunk was visible and had been known to all since 1922, and by failing to object to prior efforts to organize the salvage of the sunken ship, and by its failure to object to the salvaging of portions of the ship by skin divers and small boat operators which had been open and notorious for a number of years. The Court obviously over-

looked or failed to consider the fact that if the Court found Chapter 705 Florida Statutes 1955, to apply to this property, then the State had stood by, acquiesced and done nothing, although the provisions of that chapter require a judicial sale as soon as the property is found.

(c) The Court obviously did not consider the fact that the year and a day which it speaks of in its opinion does not begin to run until actual possession of the property had been taken. *Sir Henry Constable's case, 5 Coke's Report 108 b, 77 Repr. 218, 223,* cited by the Court is authority for this statement. It is therefore obvious that the State could have no rights whatsoever to the property until the expiration of a year and a day from the time the petitioners took possession of the property.

(d) The Court erroneously attempted to apply what it conceived to be the common law as it existed on July 4, 1776, as the law which controlled the decision in this case. It is beyond argument that property found a mile and a half offshore in navigable waters was without the jurisdiction of the common law courts and was within the jurisidction of the admiralty court and that the admiralty law would thus apply. The Court overlooked the fact, as was stated by Dean William L. Burdick in his definitive book entitled *"Principles of Roman Law and Their Relation to Modern Law", Page 76,* that maritime or admiralty law is not a part of the common law of England. It grew up from the customs of merchants in towns and cities bordering on the Mediterranean and Atlantic. The Roman law is found in the customs and usages of merchants, (The Law of Merchants or Lex Mercatoria) in various codes of maritime law and in the decisions of various judges. The best known of the codes are *Consulato Del Mare, The Laws of Oleron, The Laws of Wis-*

buy and *Ordonnance de la Marine of Louis XIV*. The State of Florida, by *Chapter 2.01, Florida Statutes 1955*, never attempted to adopt the admiralty law of England which was based largely on civil law as heretofore set forth, and, in fact, in the case of *Menendez v. Rodriguez, 106 Fla. 214, 143 So. 223 (1933)*, the court said that the civil law of Spain is not in force in this state except as portions of such civil law may be incorporated in statutory enactments.

(e) *Sir Henry Constable's case, supra*, specifically sets forth and puts to rest any question of the respective jurisdictions of the admiralty court and of the common law court. The court undoubtedly overlooked the fact that the common law would have no applicability over maritime property within the jurisdiction of the admiralty court.

(f) It is unquestioned that no law of England or decision of the English courts after July 4, 1776, is the law of Florida or is in any way controlling authority in this case. In the face of this, the court nevertheless relied on the case of the *Aquila, 1 C.Rob. 37, 165 Repr. 87, 91*, which was decided in 1798, long after the critical date of July 4, 1776. The case of course was not applicable because it, although an admiralty case, dealt with the salvage of a *floating* derelict. There is no reported case prior to July 4, 1776, which holds that a derelict or derelict property is within the King's prerogative. The State is seeking the injunction. It is the burden of the State to prove that the sunken property located in a navigable stream one and one-half miles off shore was as of July 4, 1776, a subject of the King's prerogative. This it has not done and cannot do.

(g) The Court in citing and discussing the statute of *3 Edward I, chapter 4, and 17 Edward II, chapter 11,* stated:

> "The difficulty which the Chancellor—and apparently the parties, also—has had with this question stems from a misunderstanding of the meaning and effect of the two English statutes cited above."

The Chancellor and the appellees did not misunderstand the meaning of these statutes, but on the contrary, understood them very well, for neither the appellees nor the Chancellor ever contended that the same were applicable. This contention was made by the appellants. The fact that it is erroneous is so obvious as to preclude argument.

(h) The Court obviously overlooked the rule as it is clearly set forth in *Halsbury's Law of England, Volume 6, Page 827 (2nd Edition),* wherein he, in Section 3, entitled "Surrendered Revenue Arising from Prerogative Rights" said:

> "The term 'Bona Vacantia' is applied to things in which no one can claim a property, and includes the residuary estate of persons dying intestate and without husband or wife or near relatives, wreck, treasure trove, waifs and estrays, and the personal property of dissolved corporations, *but not goods lost or designedly abandoned.* The property in which is vested in the first finder and is good against all except the true owner in the case of goods lost." (Emphasis supplied)

The Court wholly failed to recognize the exception applicable to goods abandoned, designedly abandoned, by the owner.

(i) The case of *Russell, et al v. 40 Bales of Cotton*, 21 *Fed. Cases* #12154, cited by Mr. Justice Drew in his dissention, discussed the origin and cause of establishment of claims of sovereignty or as is more commonly called, the King's prerogative. The court concluded that the prevention of the barbarous practice of destroying the property of the shipwreck was the object of the law in conferring this prerogative on the King, but refused to apply the prerogative largely because

> "The reason for sovereign interference is satisfied and the wrong originally complained of remedied."

The Florida court has held that the doctrine that when reason for any rule of law ceases, the rule should be discarded, is part of our common law, *Ripley v. Ewell, 61 So. 2d 420.* This case was cited by Mr. Justice Drew in his dissent, but evidently the argument was overlooked by the majority of the court. Likewise, the Court must have overlooked the case of *In Re Moneys in the Registry of the District Court, 170 Fed. 470,* wherein the court, giving a thorough explanation of the fact that the reason for the rule failed to exist, refused to apply the King's prerogative rule in favor of the Government as against salvors. The Court also must have overlooked the principle so vividly set forth in *Russell v. 40 Bales of Cotton, supra,* that the King's prerogative has not been considered sufficiently definite, regular and certain to establish a principle of national law beyond this: that the protection of shipwrecked persons and property is in the natural sovereignty.

3. As was stated in the landmark case of *DeLovio v. Boit et al., 7 Fed. Cases* #3776, the celebrated code of

maritime laws commonly called the *Laws of Oleron* were compiled by Richard I. But:

> "It is principally in the records of the reign of Edward III that our attention should be drawn to the nature and extent of the jurisdiction of the admiralty; for to this period as the statute of XIII Richard 2 explicitly referred, Edward III gave to the Laws of Oleron their final confirmation and called a solemn convocation of all the judges of the realm, among other things to retain and preserve the ancient superiority of the British seas and the official rights of the admiralty. But the most venerable monument is the Black Book of the Admiralty. It is, though it contains considerable additions of later periods, generally agreed to have been originally compiled in this reign . . . . . This book has always been deemed of the higest authority in matters concerning the admiralty. Besides the Laws of Oleron, at large, it contains an ample view of the crimes and offenses cognizable in the admiralty . . . . ."

Thus we see that the Court definitely overlooked the *Laws of Oleron* which was also referred to in *Russell et al v. 40 Bales of Cotton, supra.* A translation of the *Laws of Oleron* may be found in the *appendix of Volume 30, Federal Cases,* together with the *Laws of Wisbuy,* the *Laws of Hanse Towns* and the *Marine Ordinances of Louis XIV.* As was pointed out in the Russell case, the *Laws of Oleron prohibit the sovereignty from assuming any part of goods designedly abandoned,* and in the observation, it is clearly pointed out as follows:

> "It is true what is abandoned through contempt or carelessness belongs to the first occupiers."

Likewise, we feel sure that the Court overlooked the *Black Book of Admiralty* citation in our brief, for it was necessary for us to obtain photostats of the same from the Library of Congress. On *page 443* is found the following:

> "Nevertheless, if the said goods that shall be found shall have been lost within a year and a day and shall have been found after the year and a day has expired, he to whom the goods belong cannot claim them; on the contrary they ought to belong to him or them who have found them, and he whom the goods belonged cannot claim anything."

(Text 45):

> "And the reason is because there are no goods in the world which will have remained a year under water or near water or upon water which he to whom they belong can recognize by any mark so as to be able to say that the goods are his own unless he has them examined by experts, with the exception of iron or steel or other metal, and accordingly the said goods which have been found as above said ought to belong to him who has found them."

4. Nowhere in the opinion was the case of *Howard v. Sharlin* mentioned and because of the fact that it is the only other case touching on salvage ever decided by the State of Florida, it must have been overlooked. Also, the case of *W. Creavy et al v. J. W. Breedlove*, which was cited with approval in the case of *Howard v. Sharlin, supra*, must have been overlooked for that case held that: *(61 So. 2d 181)*

"The property sunk in the steamer "Genessee" having been unclaimed for 23 years was clearly derelict. The plaintiffs had a right to attempt its recovery by means of their diving bells and wrecking apparatus."

5. In *Hale's De Jure Maris, at page 38, Parag. 2d,* he said:

". . . for though the common law give the King bona wreccata as shall be shown, yet because it was lex odiosa to add affliction to the afflicted it was bound up by as many limits and circumstances and to as narrow a compass as might be."

The Court surely must have overlooked the fact that no other state in the Union has accepted the rule of the King's prerogative, nor has the United States as heretofore set forth accepted this rule of the King's prerogative. Clearly, even in England at the time of its applicability, the rule was a hated one and the Court must surely have not intended to expand and enlarge the rule as it did in its opinion, and it must have overlooked the fact that even in England as set forth above, the rule was an odious one, should be circumscribed as much as possible and, in fact, has never been adopted by the United States or any other state in our Union.

6. That the Court overlooked the fact that:

A. On and prior to July 4, 1776, jurisdiction between common law courts and admiralty courts was determined by one circumstance and one alone

(1) If the property involved had reached and been cast on or above the high water mark of the shore, then common law had jurisdiction, but if

(2) The property is in navigable waters and is below the low water mark of the shore, then the admiral (admiralty) retained sole jurisdiction.

B. As the common law of England and the statutes of England of general application as of July 4, 1776, did not apply to a case of this kind because admiralty had exclusive jurisdiction, then the case must be determined by the application of the principles of general law relating to abandoned personal property.

C. By general law as well as statute law, the person first reducing abandoned property to possession is entitled thereto.

7. That no recognized authority writing prior to July 4, 1776, and no recorded decision prior to that date supports the theory that the applicable law gave the property right indicated to the sovereign, whereas the correct principle of law is definitely disclosed by the following: *Blackstone's Commentaries, Book 1, Chapter 26, Page 294.*

> "(v) *Also if it be found in the sea, or upon the earth, it doth not belong to the King, but the finder, if no owner appears.* (w) So that it seems it is the *hiding* and *not the abandoning of it that gives the king a property;* Bracton (x) defining it, in the words of the civilians, to be 'vetus depositio pecuniae'. This difference clearly arises from the different intentions, which the law implies in the owner. The man that hides his treasure in a secret place evidently does not mean to relinquish his property, but reserves a right of claiming it again, when he sees occasion; and if he dies, and the secret also dies with him, the law gives it to the king, in part

of his royal revenue. *But a man that scatters his treasure into the sea, or upon the public surfaces of the earth, is construed to have absolutely abandoned his property, and returned it into the common stock, without any intention of reclaiming it; and therefore it belongs as in a state of nature, to the first occupant, or finder,* unless the owner appears and assert his right, which then proves that the loss was by accident, and not with an intent to renounce his property." (Emphasis supplied)

That the United States Government designedly abandoned the battleship "Massachusetts" in navigable waters below low tide is without argument and the Court must surely have overlooked the law as expressed by Blackstone.

8. The Court failed to consider the fact that *Chapter 2, Florida Statutes 1955* prohibited the adoption of the common and statute laws of England which were of a general and not of a local nature which were inconsistent with the Constitution and laws of the United States and of the Acts of the Legislature. The opinion of the Court in attempting to apply what it deemed to be the applicable common law is clearly contrary to the maritime law of the United States.

9. The Court failed to consider the fact that state legislatures are without power to impair the rules of the general maritime law. *The Lettawanna, 21 Wallace 558. 22 Law Ed 654* and numerous other cases so hold. The recent case of *J. B. Effenson Company vs. Three Bays Corp., Ltd.* decided November 14, 1966, in the Fifth Circuit Court of Appeals, held in effect that a statute of limitations of the State of Florida would not be applied when it was contrary to the general maritime law.

10. The Court overlooked the fact that the appellees had possession of the property and could not be divested of their property rights without the payment of just compensation, for to do so would violate the Fourteenth Amendment of the Constitution of the United States which guarantees that no state shall deprive any person of life, liberty or property without due process of law.

11. The Court obviously has misapplied the law with respect to wreck, recognizing that goods to be wreck of the sea must have been cast on the shore, yet in the same breath saying that to so hold the Court

> "would have to hold that the statute (705) by misapplication divested the state of the prerogative right of the Crown to which it succeeded when it became a sovereign state of this Union and adopted the common law of England as it existed in 1776."

The Court fails to recognize as heretofore set forth that the prerogative right of the Crown was an odious rule and must be strictly construed. In line with that construction the Court clearly failed to recognize the fact that a sunken hulk of a battleship constituted neither flotsam, jetsam or ligan, and if it indeed was not in one of the enumerated classifications, it was not in fact within the prerogative of the Crown. The case of *Murphy v. Dunham, 38 Fed. 502*, discusses the distinction in detail and although we do not wish to burden the Court, we feel that this case is a landmark "red cow" case which must have been overlooked by the Court in order for it to render its opinion. On pages 13 and 14 of the appellees' brief, it was said:

> "The coal lying at the bottom of the lake was not by the common law wreck of the sea. Lord Hale in

his treatise De Jure Maris, 37, speaking of wreck, says: 'The kinds of it are two: cast upon the land or shore; second, improper, for goods that are a kind of sea waifs or strays; flotsam, jetsam and ligan.' This coal had never been cast upon the land or shore, and hence was not wreck proper. It was not flotsam, because it did not float upon the water. It was not jetsam, because it had never been cast into the sea to save the ship; nor was it ligan, because the very definition of the word from the Latin 'ligo', to bind, indicates that it must be buoyed; but it was simply property lying at the bottom of the sea, which 'awaits its owner'. 1 Bl. Comm. 290-295; 3 Black Book Adm. 441, 445; 4 Black Book Adm. 517; Ang. Tidewaters, c.10; Baker v. Hoag, 7 N. Y. 555."

Counsel for the appellees are fully cognizant of the rule that argument should not be included in a petition for rehearing, and it is respectfully submitted that the petition in this case is not presented in that light, notwithstanding the inclusion of citations supporting direct statements contained in the petition. It is believed that if such citations had been omitted, that counsel would have been remiss in their duty to fully advise the Court with respect to the result of their investigation which discloses the omissions and oversights in the opinion and grounds on which the petition is predicated.

WHEREFORE, petitioners pray that a rehearing be granted and that thereupon the decision of the lower court be affirmed.

Respectfully Submitted,
(S.) RICHARD H. MERRITT,
(Richard H. Merritt).
JONES AND HARRELL,
By (S.) JOE J. HARRELL,
(Joe J. Harrell.
Attorneys for Petitioners,
Pensacola, Florida.

CERTIFICATE OF SERVICE.

This is to certify that a copy of the Petition for Rehearing of Petitioners have been furnished Honorable Ralph W. McLane, Assistant Attorney General and Honorable John D. Moriarty, Assistant Attorney General, attorneys for Appellants, by mail, this 14th day of December, 1956.

(S.) R. H. MERRITT.

APPENDIX "I".

SUPREME COURT OF FLORIDA.

CASE No. 27,838.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Appellants,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, N. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Appellees.

MOTION TO STRIKE APPELLEES' PETITION FOR REHEARING AND TO DENY APPELLEES' MOTION FOR ORAL ARGUMENT, AND PERMISSION TO FILE BRIEF.

A. Come now appellants and move the Court to strike the Petition for Rehearing filed herein by appellees upon the following grounds:

1. That said Petition for Rehearing violates Rule 45 of the Rules of this Court.

2. That said Petition for Rehearing is a mere re-argument of the contentions advanced by the appellees in their brief and oral arguemnt before the Court and disposed of by the opinion of this Court.

3. The opinion filed in this cause on November 16, 1956 by this Court clearly shows that the questions involved in this case were thoroughly and ably considered by this Court and that the applicable laws and cases were properly interpreted and applied to the questions involved.

B. The appellants assert that the motion for oral argument and petition to file brief in support of the appellees' Petition for Rehearing should be denied for the following reasons:

1. Supreme Court Rule 45(4) specifically provides that no oral argument will be allowed on Petitions for Rehearing.

2. That no useful purpose can be accomplished by a re-argument of this cause.

3. That said Petition for Rehearing is an attempt to re-argue appellees' contentions, disposed of by the opinion of this Court.

4. That said Motion sets forth immaterial and irrelevant matters having no bearing upon the issues in this cause and the decision of this Court.

5. That any alleged research by the appellees after the filing of the opinion in this cause comes too late.

6. That should the appellees have desired to submit additional authorities for the court's consideration, timely application should have been made for permission to file a supplemental brief prior to the decision of this Court.

Respectfully submitted,

(S.) RICHARD W. ERVIN,
(Richard W. Ervin),
Attorney General.
JOHN D. MORIARTY,
(John D. Moriarty),
Assistant Attorney General.
RALPH M. McLANE,
(Ralph M. McLane),
Assistant Attorney General,
Attorneys for Appellants.

CERTIFICATE OF SERVICE.

THIS IS TO CERTIFY that a copy of the foregoing has been furnished Honorable R. H. Merritt, Box 985, Pensacola, Florida and Honorable Joe J. Harrell, Florida National Bank Building, Pensacola, Florida, Attorneys for Appellees, by registered mail, return receipt requested, this 2nd day of January, 1957.

RALPH M. McLANE.

APPENDIX "J".

IN THE SUPREME COURT OF FLORIDA.

CASE No. 27,838.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Appellants,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, N. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Appellees.

MOTION FOR ORDER FIXING TIME FOR FILING OF BRIEFS ON REHEARING.

The appellants move the Court for an order fixing the time for filing briefs herein prior to the re-argument of this cause on March 14, 1957, upon the following grounds:

(1) That this Court, on January 24, 1957, granted the appellees' petition for rehearing, set the cause for oral argument on March 14, 1957, and permitted the filing of additional briefs, if the parties so desired.

(2) That it appears from the appellees' petition for rehearing and motion for oral argument and permission to file brief in support thereof that they will rely upon

authorities not previously considered by the Court in rendering its opinion herein on November 16, 1956.

(3) That in the interest of justice all briefs should be filed prior to oral argument in this cause on rehearing.

.....

RICHARD W. ERVIN,
Attorney General.

.....

JOHN D. MORIARTY,
Assistant Attorney General.
RALPH M. McLANE,
(Ralph M. McLane),
Assistant Attorney General,
Attorneys for Appellees.

CERTIFICATE OF SERVICE.

THIS IS TO CERTIFY that a copy of the foregoing has been furnished Honorable R. H. Merritt, Box 985, Pensacola, Florida and Honorable Joe J. Harrell, Florida National Bank Building, Pensacola, Florida, Attorneys for Appellees, by registered mail, return receipt requested, this 31st day of January, 1957.

RALPH M. McLANE.

APPENDIX "K".

IN THE SUPREME COURT OF FLORIDA.

JANUARY TERM, A. D. 1957.

FRIDAY, FEBRUARY 1, 1957.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Appellants,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, N. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Appellees.

Attorneys for appellants have filed a motion for the entry of an order fixing the time for filing briefs on rehearing granted in the above cause: it is ordered that appellees file their brief and serve a copy thereof upon appellants on or before February 18, 1957, and that appellants file their brief and serve a copy of same upon attorneys for appellees on or before February 25, 1957.

A True Copy

TEST:

(Seal)

GUY T. McCORD,
Clerk, Supreme Court.

APPENDIX "L".

IN THE SUPREME COURT OF FLORIDA.

JANUARY TERM, A. D. 1957.

THURSDAY, JANUARY 24. 1957.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Appellants,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, N. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Appellees.

The appellees have filed a petition for rehearing in the above cause and the same having been duly considered, it is ordered that said petition be and the same is hereby granted and said cause is set down for reargument at 9:00 o'clock a.m. Thursday, March 14, 1957, and attorneys are allowed not exceeding twenty minutes to the side for oral argument and may file additional briefs if they desire to do so.

A True Copy.

TEST:

GUY T. McCORD.
Clerk, Supreme Court.

(Seal)

APPENDIX "M".

IN THE SUPREME COURT OF FLORIDA.

JUNE TERM, A. D. 1957.

EN BANC.

CASE No. 27,838.

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Appellants,

versus

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, N. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Appellees.

Opinion filed June 12, 1957.

An Appeal from the Circuit Court for Escambia County, H. B. Crosby, Judge.

Richard W. Ervin, Attorney General, Ralph M. McLane and John D. Moriarty, Assistant Attorneys General, for Appellants.

R. H. Merritt and Joe J. Harrell, for Appellees.

J. B. Hopkins, for Intervenors.

ON REHEARING GRANTED.

ROBERTS, J.: After further consideration upon rehearing granted, we adhere to our former opinion and judgment. See also Sec. 716.01 F.S.A.

It is so ordered.

TERRELL, C.J., THOMAS, HOBSON, THORNAL & O'CONNELL, JJ., CONCUR, DREW, J., DISSENTS.

"STATE OF FLORIDA
COUNTY OF LEON

I, GUYTE P. McCORD, Clerk of the Supreme Court of Florida, do hereby certify that the foregoing contains a copy of the appendices filed by all parties together with all the proceedings in the Supreme Court of the State of Florida.

.....
Clerk of the Supreme Court
of the State of Florida."

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FILED
SEP 10 1957
JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM.

No. 448

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, M. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Petitioners,

versus

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND FOR SUPPLEMENTAL RELIEF.

J. McHENRY JONES,
706 Florida National Bank Bldg.,
Pensacola, Florida,
RICHARD H. MERRITT,
JOE J. HARRELL,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM.

No.

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, M. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Petitioners,

versus

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Respondents.

PETITION FOR CERTIORARI AND SUPPLEMENTAL RELIEF.

The petitioners are The Massachusetts Company, a joint venture composed of Southern Scrap Material Company, Ltd., a corporation, M. D. Friedman Company, a corporation; and Eastern Scrap and Salvage Company, a corporation.

The respondents are The State of Florida, by and through Richard W. Ervin, as Attorney General of the

State of Florida, Leroy Collins, as Governor of the State of Florida, Ray E. Green, as Comptroller of the State of Florida, J. Edwin Larson, as Treasurer of the State of Florida, Richard W. Ervin, as Attorney General of the State of Florida, and Nathan Mayo, as Commissioner of Agriculture of the State of Florida, composing the Trustees of The Internal Improvement Fund of the State of Florida, a component governmental agency of the State of Florida; Leroy Collins, as Governor of the State of Florida, R. A. Gray, as Secretary of State of the State of Florida, Richard W. Ervin, as Attorney General of the State of Florida, Ray E. Green, as Comptroller of the State of Florida, J. Edwin Larson, as Treasurer of the State of Florida, Thomas D. Bailey, as State Superintendent of Public Instruction of the State of Florida, and Nathan Mayo, as Commissioner of Agriculture of the State of Florida, constituting the State Board of Conservation of the State of Florida, a component governmental agency; and Richard W. Ervin, as Attorney General of the State of Florida, in his official capacity as Attorney General of the State of Florida, Pensacola Sports Association, a non-profit corporation and Pensacola Anglers and Hunters Club, a non-profit corporation.

OPINIONS BELOW.

1. The opinion of the Chancellor of the First Judicial Circuit of the State of Florida, in and for Escambia County, denying the injunctive relief sought by the respondents is unreported.

2. The opinion of the Supreme Court of the State of Florida on original hearing, together with the opinion of the Supreme Court of Florida on re-hearing, appear in 95 So. 2d 902, at page 902.

JURISDICTION.

(i) The Decree of the Chancellor was rendered September 8, 1956, the first opinion of the Supreme Court of Florida was rendered November 16, 1956, and the opinion on re-hearing was rendered June 12, 1957.

(ii) The statutory provision conferring jurisdiction is 62 Stat. 929 (Title 28, U.S.C.A. Section 1257). See also Supreme Court Rule 19. Said decision "has decided a Federal question of substance not theretofore determined by this court", and "has decided it in a way probably not in accord with applicable decisions of this court . . . has decided an important question of Federal law which has not been, but should be, settled by this court . . . has decided a Federal question in a way not coupled with applicable decisions of this Court", and also "has so far *departed* from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's power of supervision".

QUESTIONS PRESENTED.

1. IS THE SUBMERGED LANDS ACT OF 1953 UNCONSTITUTIONAL?

2. DOES THE STATE OF FLORIDA, BY REASON OF RIGHTS ACQUIRED UNDER THE SUBMERGED LANDS ACT TO BOTTOM LANDS UPON WHICH THE MASSACHUSETTS LIES, HAVE A TITLE TO THE WRECKED SHIP SUPERIOR TO THAT OF THE PETITIONERS?

3. DID NOT THE SUPREME COURT OF FLORIDA VIOLATE THE CONSTITUTION AND THE LAWS OF THE UNITED STATES WHEN THE MAJORITY HELD THAT THE STATE OF FLORIDA SUCCEEDED TO THE PREROGATIVE RIGHTS OF THE CROWN WHEN IT BECAME A SOVEREIGN STATE OF THE UNION AND HELD THAT "THE STATE OF FLORIDA HAS A POSSESSORY RIGHT OR TITLE TO THE WRECK OF THE MASSACHUSETTS SUPERIOR TO THAT OF THE COMPANY . . ."?

4. DID NOT THE SUPREME COURT OF FLORIDA VIOLATE THE CONSTITUTION AND LAWS OF THE UNITED STATES WHEN THE MAJORITY HELD THAT A STATE STATUTE WAS PARAMOUNT TO AND CONTROLLING WHEN THE SAME WAS IN DIRECT CONFLICT WITH AND VIOLATIVE OF THE GENERAL MARITIME LAW APPLICABLE TO POSSESSION AND OWNERSHIP OF A WRECKED SHIP RESTING ON THE BOTTOM OF THE GULF OF MEXICO IN NAVIGABLE WATERS?

5. WAS NOT THE DECISION OF THE SUPREME COURT OF FLORIDA SUCH A GROSS, CAPRICIOUS AND OBVIOUS ERROR AS TO DEPRIVE THE PETITIONERS OF DUE PROCESS OF LAW GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISIONS?

6. WAS NOT THE TAKING OF THE VESSEL MASSACHUSETTS BY THE STATE OF FLORIDA FROM THE PETITIONERS A VIOLATION OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

1. That segment of the Fourteenth Amendment to the Constitution of the United States wherein it is provided:

> "* * * * now shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

2. The Fifth Amendment as a part of the Bill of Rights provides:

> "* * * Nor shall private property be taken for public use, without just compensation".

3. Article III, Section 2, clause 1 provides:

> "The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction".

4. Chapter 2.01, F. S. A., provides:

"Common law and certain statutes declared in force. The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this state".

5. Chapter 705.01, F. S. A., provides:

"County Judge to order sale. Whenever any wrecked derelict goods, abandoned motor vehicle or other personal property shall be found in any county in this state, the county judge shall ascertain the amount and situation of the same, and by his written order shall cause the sheriff to take charge thereof and sell the same at public outcry, after giving a reasonable public notice of the time and place of such sale".

Chapter 705.02, F. S. A., provides:

"Mode of ascertaining salvage. In order to ascertain the quantum of salvage to be paid to the person finding and reporting such wrecked derelict goods, abandoned motor vehicle or other personal property, the county judge shall appoint two disinterested citizens of the county as arbitrators (who shall be authorized in case of disagreement to select an umpire), who shall determine the quantum of salvage, not to exceed one-half the proceeds of such goods, to be paid to the salvors or persons finding and reporting such goods, and the county judge shall

draw his order upon the sheriff, who shall pay the same for the amount so awarded in favor of the salvors or persons finding and reporting."

6. Chapter 715.01, F. S. A., provides:

"Title to personal property found in public places. The title to all personal property found in or upon public conveyances, premises at the time used for business purposes, parks, places of amusement, public recreation areas and other places open to the public is hereby vested in the finder unless the same be called for or claimed by the rightful owner thereof within six months after the finding thereof. Employees of public transportation systems shall be deemed agents of such transportation system and personal property found on public conveyances, in depots, and garages of said transportation system shall be turned in to the proper person or department designated to receive such property by the said transportation systems, and such property shall be securely kept for the period of time as required by this section after which time if unclaimed by the rightful owner the title of such property shall be vested in the transportation system and not in the employee".

STATEMENT OF THE CASE.

The United States Battleship, MASSACHUSETTS, in the year 1922 was scuttled and sunk 1.2 miles off the entrance to Pensacola Bay in Escambia County, Florida, in navigable waters in the Gulf of Mexico. A portion of the

ship has always been and is now visible above the surface of the water. In the month of August, 1956, the petitioners, after securing a permit from the U. S. Corps of Engineers, and depositing an indemnity bond in the sum of $25,000.00, took possession of and commenced salvaging the battleship. At no time prior to the commencement of the work did the State of Florida lay any claim to said battleship. Within a few days thereafter, the respondents wired the Secretary of the Navy and ascertained that the battleship had been abandoned by the Navy Department and the United States of America. The respondents then filed a complaint for an injunction in the Circuit Court of Escambia County, Florida. A temporary injunction was granted and on final hearing, the injunction was dissolved and the Chancellor held that the complaint be dismissed at the cost of the plaintiff. The respondents thereupon appealed to the Supreme Court of Florida and on November 16, 1956, a decision was returned which reversed the holding of the Chancellor. A petition for re-hearing was filed by the petitioners and the same was granted. Thereafter on June 12, 1957, the decision on re-hearing was handed down by the Supreme Court of Florida and from that decision certiorari is sought to protect the constitutional rights of the petitioners and to obtain supplemental relief.

THE FEDERAL QUESTIONS WERE APPROPRIATELY PRESENTED AND ADVERSELY DETERMINED.

In paragraph numbered 6 of the original complaint of the respondents they alleged "title to all submerged sovereignty lands not vested in the Trustees of the Internal Improvement Fund of the State of Florida is vested in the State of Florida as a sovereign state". This allegation was specifically denied in paragraph numbered 4 under the 8th defense of the petitioners. Subsequently in paragraph numbered 9 of the complaint, the respondents specifically set forth and relied upon the Submerged Lands Act (67 Stat. 29, 43 U. S. C. 1301, et seq.). In paragraph numbered 7 of the 8th defense, the petitioners answered as follows "7. Defendants admit that the Submerged Lands Act as alleged in paragraph 9 of the complaint is as partially quoted, but they further deny that it is material to the issue of the ownership of the subject matter of this suit or that by said Act the State of Florida was vested with ownership of the property or land involved in this suit."

In raising the question of the general maritime law in paragraph numbered 19 of the 8th defense, the respondents said:

> "19. The defendants deny each and every allegation of paragraph 21 of the Complaint and further allege that any assertion and exercise of jurisdiction, ownership or control over wrecks, sunken ships and other properties as alleged, is without lawful authority and contrary to law."

In raising the applicability of the general maritime law, the respondents in the petition for re-hearing said:

> "8. The Court failed to consider the fact that *Chapter 2, Florida Statutes 1955* prohibited the adoption of the common and statute laws of England which were of a general and not of a local nature which were inconsistent with the Constitution and laws of the United States and of the Acts of the Legislature. The opinion of the Court in attempting to apply what it deemed to be the applicable common law is clearly contrary to the maritime law of the United States."

In addition to the foregoing, in the petition for re-hearing the respondents said:

> "9. The Court failed to consider the fact that state legislatures are without power to impair the rules of the general maritime law. *The Lottawanna, 21 Wallace 558, 22 Law Ed. 654* and numerous other cases so hold. The recent case of *J. B. Effenson Company vs. Three Bays Corp., Ltd.*, decided November 14, 1956, in the Fifth Circuit Court of Appeals, held in effect that a statute of limitations of the State of Florida would not be applied when it was contrary to the general maritime law."

The constitutional questions relating to a violation of the 5th and 14th Amendments to the Constitution of the United States were appropriately raised in the petition for re-hearing as follows:

"10. The Court overlooked the fact that the appellees had possession of the property and could not be divested

of their property rights without the payment of just compensation, for to do so would violate the Fourteenth Amendment of the Constitution of the United States which guarantees that no state shall deprive any person of life, liberty or property without due process of law."

Both Appendix A and B contain the foregoing matters relating to the Complaint of the respondents and the Answer of the petitioners. Appendix H contains the petition for rehearing alluded to above.

The Supreme Court of Florida evaded or adversely decided all of the Federal questions which were timely and properly raised so as to give this court jurisdiction to review the judgment for Writ of Certiorari.

ARGUMENT.

There are a number of special and important reasons affecting not only the petitioners but also the public, the various states and the Federal Government, why the writ should be granted.

There are several complicated constitutional questions which present themselves at the very outset relating to the property rights of individuals as opposed to the power of a state to usurp the ownership of abandoned property lying offshore, in navigable waters.

There is also the further problem of the general maritime law enunciated by the United States courts being

challenged by a state judicial fiat, and a decision by a state supreme court so arbitrary and capricious as to be such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. The decision of the Florida Supreme Court has shocked our best legal scholars, law school professors, practicing attorneys, judges and members of the Florida Bar.

QUESTION 1.

Prior to the passage of the Submerged Lands Act of 1953, there was grave doubt as to whether or not Congress could constitutionally bestow a gift upon a few states to the detriment of the remainder of the states who were not such fortunate recipients. There was also grave doubt that Congress had the power to dispose of rights vested in the United States as an incident of national sovereignty. *Volume 2, U. S. Code Congressional & Administrative News, Pages 1385 to 1640*, inclusive, contains an exhaustive study of the legislative history of the Act. Pages 1618 to 1640, inclusive, contain a definitive discussion of the minority view by Solicitor General Philip B. Perlman.

The Supreme Court of the United States, in the case of *State of Alabama v. Texas, 347 U. S. 372, 98 Law Ed. 689, 74 S.C.R. 481*, considered the constitutionality of the statute and failed to grant Alabama and Rhode Island leave to file complaints contesting the constitutionality of

the Submerged Lands Act of 1953. The Court therefore, in effect, held that the complaints were frivolous but nevertheless Mr. Justice Black and Mr. Justice Douglas both dissented. It seems that the Court should forever settle the question of "equal footing" and the "incidents of national sovereignty involved once the low water mark is passed". If the Court were to find that the Act was unconstitutional, then that decision would be conclusive with respect to the issues of this case. The case of *United States v. California, 332 U. S. 19, 91 Law Ed. 1889, 67 S.C.R. 1658*, would then stand unchallenged as the controlling law.

QUESTION 2.

The Submerged Lands Act of 1953 served only to quitclaim to the several states certain things which were specifically enumerated which included title to and ownership of "the lands beneath navigable waters within the boundaries of the respective states and the natural resources within such lands and water. . . .". The Act was restrictive in nature and specifically reserved certain rights to the United States, one of these rights being the use, development, improvement or control by the United States of said lands and waters for purpose of navigation. The Act under no reasonable construction could be held to transfer to the State of Florida a sunken battleship lying in offshore navigable waters, owned or abandoned by the United States. It therefore follows that title to said property must have been vested either in the United States of America under either its legitimate right of ownership or under the decision of the *California* case,

and never was this title imparted to the State of Florida. The State, in its complaint, admitted that the vessel had been abandoned by the Navy Department of the United States and the proof was clear that the petitioners had taken exclusive possession to the property prior to any affirmative action taken by the State of Florida. The petitioners could only be divested of their property by due process of law, which would include the payment of just compensation.

QUESTION 3.

For the Supreme Court of Florida to bottom its decision on the succession to the prerogative right of the sovereign of England is absurd. In the case of *United States of America v. State of California, supra,* and the cases of *United States of America v. State of Louisiana, 339 U.S. 699, 94 Law Ed. 1216, 70 Sup. C. 914;* and the case of *United States of America v. State of Texas, 339 U.S. 707, 94 Law Ed. 1221, 70 Sup. C. 918,* the Supreme Court of the United States conclusively held that the United States was possessed of paramount rights in and full domain and power over, all offshore lands beneath navigable waters. The Supreme Court emphatically stated in the case of *U. S. v. Texas, supra, (339 U.S. 719):*

> "Once low water mark is passed, the international domain is reached. Property rights must then be so subordinated to political rights as in substance to coalesce and unite in the national sovereign."

and in the case of *Alabama v. Texas, supra*, it was said *(347 U.S. 283)*:

> "Any property interest which the States may earlier have held in the bed of the marginal sea were so subordinated to the rights of sovereignty as to follow sovereignty."

It is therefore apparent that any rights that the State of Florida might claim could only be rights which they obtained from the United States of America.

On the other hand, even if the foregoing were not true, it is nevertheless clear that the King's Prerogative is not a part of the law of the State of Florida. In *Volume 3, Florida Statutes 1941*, entitled "Helpful and Useful Matter", on Page 3 in the foreword, there is an explanation to the effect that the Legislature on December 27, 1845, authorized the Governor to appoint a suitable person to collect and arrange under appropriate heading all of the Statutes of Great Britain in force in this State. Pursuant to that authorization, Leslie A. Thompson, Esq., was commissioned by the Governor to compile the British Statutes in force in the State of Florida. Judge Thompson, who later became a judge on the bench of the Supreme Court of Florida, completed his assignment and one copy of the manuscript is now available in the Library of the Supreme Court of Florida. As was stated by Guy W. Botts, Esq., in the foreword, the ability of Judge Thompson as a compiler was heartily acknowledged by his contemporaries.

Later, Justice Fred H. Davis, while Attorney General of Florida, caused to be published a summary of the statutes and this was made available to the Florida Bar. We earnestly suggest to the Court that this compilation of British Statutes in force in the State of Florida, be carefully considered and it should be noted that the British Statutes of *3 Edw. I, c.4* and *17 Edw. II, c.11* which were cited by Mr. Justice Roberts in his opinion and held to be controlling, *are not listed among the British Statutes in force in the State of Florida.* See Table of Statutes Arranged Alpabetically, *Vol. III, Florida Statutes, 1941, p. 77.*

See also *University of Florida Law Review, Vol. III,* page 303, the article by James W. Day. entitled "Extent to Which the English Common Law and Statutes are in Effect". On pages 308-310, he says:

> "Section 2.01 of Florida Statutes 1949 adopts only such portions of the English common law and statutes in effect on July 4, 1776, as are of a *general nature.* It expressly excludes those portions that are local in character. Even in the absence of an express exclusion of local English common law and statutes in the English-law-adopting statute of a jurisdiction, it is "held that only the English law that is of general application and not that which is *local to England* is in effect. As was stated by the Justices of the Supreme Court of Pennsylvania in their report made to the Legislature of the State in 1808 under statutory mandate, there are included within this exception *'a multitude of English statutes, relating to the King's Prerogative, the rights and privileges of the nobility and clergy, the local com-*

> *merce and revenue of England, and other subjects unnecessary to enumerate'.* Similarly, the so-called Black Act for the suppression of poaching was held not to be in effect in Georgia, since it was 'founded upon a tender solicitude for the amusement and property of the aristocracy of England'. (Emphasis supplied.)

How utterly foreign to our customs and institutions is the King's Prerogative. We have no droits of Admiralty in Florida. We have no office of Lord High Admiral in our system of government. We have no prerequisites of admiralty. We have no admiralty law other than the general maritime law of the United States.

The case of *Russell, et al. v. 40 Bales of Cotton, 21 Fed. Cases #12154*, cited by Mr. Justice Drew in his dissenting opinions, discussed the origin and cause of establishment of claims of sovereignty or as is more commonly called, the King's Prerogative. The court concluded that the prevention of the barbarous practice of destroying the property of the shipwreck was the object of the law in conferring this prerogative on the King, but refused to apply the prerogative largely because

> "The reason for sovereign interference is satisfied and the wrong originally complained of remedied."

The Florida court has held that the doctrine that when reason for any rule of law ceases, the rule should be discarded, is part of our common law, *Ripley v. Edell, 61 So. 2d 420*. This case was cited by Mr. Justice Drew in his dissent, but evidently the argument was overlooked by

the majority of the court. Likewise, the Court must have overlooked the case of *In Re Moneys in the Registry of the District Court, 170 Fed. 470,* wherein the court, giving a thorough explanation of the fact that the reason for the rule failed to exist, refused to apply the King's Prerogative rule in favor of the Government as against salvors. The Court also must have overlooked the principle so vividly set forth in *Russell v. 40 Bales of Cotton, supra,* that the King's Prerogative has not been considered sufficiently definite, regular and certain to establish a principle of national law beyond this: that the protection of shipwrecked persons and property is in the natural sovereignty.

In *Hale's De Jure Maris, at page 38, Parag. 2d,* he said:

> ". . . for though the common law give the King bona wreccata as shall be shown, yet because it was lex odiosa to add affliction to the afflicted it was bound up by as many limits and circumstances and to as narrow a compass as might be."

The United States as heretofore set forth has not accepted this rule of the King's Prerogative. Clearly, even in England at the time of its applicability, the rule was a hated one and the Supreme Court of Florida must surely have not intended to expand and enlarge the rule as it did in its opinion, and it must have overlooked the fact that even in England as set forth above, the rule was an odious one, should be circumscribed as much as possible and, in fact, has never been adopted by the United States or other states in our Union.

QUESTION 4.

State legislatures are without power to impair the rules of the general maritime law. *The Lottawanna, 21 Wallace 558, 22 Law Ed. 654,* and numerous other cases so held. The case of *In Re Highland Navigation Corp., 24 Fed. 2nd 582,* is an extremely important case on this particular question. In that case the City of New York had passed an ordinance which provided that in case any vessel shall be sunk or wrecked and be abandoned for ten days the owner would be notified to remove the same, and if he failed to remove it he would have to pay the costs of removal. The Highland Navigation Corp., had a vessel to sink and abandoned the vessel, refusing to remove it. The court held, text 584:

> "(3) Statutes imposing on an owner of a wreck the duty to remove it, or to pay local authorities the expense of removal, have been held not to apply to an owner whose vessel has been wrecked and abandoned. *The wrecked vessel after abandonment has no owner.* See Winpenny v. City, 65 Pa. 135; Thames Towboat Co. v. Fields (D.C.) 287 Fed. 155." (Emphasis supplied.)

The recent case of *J. B. Effenson Company v. Three Bays Corp., Ltd., decided November 14, 1956, in the Fifth Circuit Court of Appeals,* held in effect that a statute of limitations of the State of Florida would not be applied when it was contrary to the general maritime law.

The State of Florida has recognized the rule in the only reported case of the Supreme Court, prior to the

case at bar, touching this particular question which is the case of *Howard v. Sharlin, 61 So. 2nd 181.* That case specifically held, after citing with approval the case of *Greevy v. Breedlove, 12 La.Ann. 745,* that salvors may take possession and control of the said vessel. The case in effect held also that the salvor was entitled to the lead contained in said vessel.

The Supreme Court of Florida inferred that *Chapter 705, Florida Statutes* might be relevant. This statute provides for the disposition of wrecked derelict goods, abandoned motor vehicles and other personal property found within a county of the state. Clearly this statute should not be held to impair the rules of general maritime law. In fact, this statute does not apply to this case at all and if there is any relevant statute, as was stated by Mr. Justice Drew in his dissent, it is *Chapter 715, Florida Statutes Annotated.*

In the case of *Thompson v. United States, 62 Ct. of Claims 516,* the court, speaking through Judge Hay, said, (text 534):

> "The facts show that the vessel was abandoned by its owners in the navigable waters of the United States, and being so abandoned it became the property of said decedent when he reduced it to his possession. This he did with the sanction of the authorities of the United States, and the United States recognized the ownership of said decedent when the United States requisitioned and took over the vessel and made an award to him for its value.

"It seems well settled that when a vessel is derelict and abandoned in the navigable waters of the United States or anywhere else it belongs to that person who finds it and reduces it to possession. Congress could undoubtedly provide that the proceeds of derelicts and abandoned vessels in the navigable waters of the Uinited States be paid into the Treasury; but no such law has been passed, and until it is the principles of natural law must prevail. See Gardner v. 99 Gold Coins, 111 Fed. 552; United States v. Tyndale, 116 Fed. 820; In re Moneys in Registry, 170 Fed. 470; Gibson v. United States, 166 U.S. 269; Hardin v. Jordan, 140 U.S. 371; Pollard's Lessee v. Hagan, 3 Howard 212, 230; Murphy v. Dunham, 38 Fed. 503, 509, 510."

The extremely well reasoned case of *Murphy v. Dunham, 38 Fed. 502*, applied the admiralty rule to a cargo of coal lying at the bottom of Lake Michigan.

In the case of *Pearson v. Black, 120 S.W. 2d 1075*, the Court said:

"We know of no rule or principle of law to the effect that abandoned personal property becomes the property of him upon whose land it happens to be left."

In the case of *Dalmes v. Stothatos, 80 Fed. Sup. 828*, the Court held that salvage is a question arising under *jus gentium* and does not ordinarily depend upon municipal laws of particular countries. To the same effect is *Usatorre v. Compagnia Argentina, 64 Fed. Sup. 370.*

Mr. Justice Bradley in the *Lottawanna* case, *supra*, succinctly stated the general rule as follows:

> "That we have a maritime law of our own, operative throughout the United States, cannot be doubted. The general system of maritime law which was familiar to the lawyers and statesmen of the country when the Constitution was adopted was most certainly intended and referred to when it was declared in that instrument that the judicial power of the United States shall extend 'to all cases of admiralty and maritime jurisdiction.' . . . .
>
> "One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commerical character affecting the intercourse of the states, with each other or with foreign states."

QUESTION 5.

We have solicited and received the aid of Dean Roscoe Pound, the Editor of West Publishing Company, the Editor of the Lawyers Cooperative Publishing Company, the Editor in Chief of the American Law Book Company, a graduate research assistant at the University of Virginia, the Editor of Florida Law Review, various professors on "Personal Property" and eminent lawyers and judges throughout the State of Florida. Not one of the

foregoing persons was able to reconcile the decision of the Supreme Court of Florida with any recognized, established principles of law. A number of attorneys who have no interest in the case other than that as lawyers have stated that in their opinion this is the poorest decision ever handed down by the Supreme Court of Florida.

We have searched the reported cases in the United States and a number of British cases in an effort to find one case where a State asserted a claim to abandoned personal property in opposition to the claim of a private citizen having prior possession. We have failed to find a single case of this nature. In this case, the State stood back, acquiesced and allowed the petitioners to spend large sums of money in reliance on what is generally understood to be the law, and then after doing so, the State, at a late date, although it never asserted any right or claim to the property for some thirty years, now attempts to divest a private citizen of the property without due process of law. The conduct and action of the State must certainly shock the conscience of the Court, for never in the history of any reported case have we been able to find a similar action taken with respect to personal property.

In our brief to the Florida Supreme Court, we stated that in our opinion if the law for which the respondents contend is applied, then all of the settled law, maritime and property law of the United States, and literally of the world, relating to an abandoned wreck of a ship will be upset. Mr. Justice Roberts in his opinion, on page 907, quoted that statement and then proceeded to hold

that the King's Prerogative applied. We have heretofore discussed that phase of the case but we earnestly contend that the Supreme Court of Florida has committed such a gross, capricious and obvious error as to deprive the petitioners of due process of law, and such error calls for an exercise of this Court's power of supervision. How could a judge write the opinion in *Howard v. Sharlin, supra*, the one Florida case dealing with salvage, and then less than four years later the same judge write an opinion diametrically opposite without even mentioning the previous decision. We are not unmindful that this Court would be most reluctant to act, but we do feel that there is a precedent for such action as stated by Mr. Justice Cardozo in the case of *Roberts v. New York*, 295 *U.S. 264, 79 L. Ed., 1429.*

It is undoubtedly competent for Congress to enact such laws as may be determined to be proper and constitutional, but until such statutes are enacted it is certainly not proper for the State of Florida to encroach upon individual citizens by seeking the extension of the law by an interpretation that would be so wide and all-inclusive as to be in effect legislation by judicial interpretation and decision. However, only by this formula can the decision reached in this Court stand. Until some law is passed providing for its disposition upon the principles of our law as it exists today and of natural law, the property belongs to the finder, or in this case, the possessor.

The Constitution of Florida in Section 12 of its Declaration of Rights specifically sets forth that private property

shall not be taken without just compensation. In the instant case, the State, without any semblance of title, is attempting to ride roughshod over the rights of a private citizen whose rights are recognized by universal law. The fundamental rights of justice, equity and fair dealing should not allow the State to prevail. It must be kept foremost in mind that the statement of Mr. Justice Hughes, when he said "if citizens must turn square corners in their dealings with the State, then the State is held to the same standard of rectangular rectitude in its dealings with its citizens" applies to the respondents.

QUESTION 6.

The Court, in its opinion, must have overlooked the fact that the petitioners, by reducing the hulk of the "MASSACHUSETTS" to their possession, as was so found by the chancellor, could not be divested of their ownership and property rights without payment of just compensation. To do so would violate the *5th Amendment of the Constitution of the United States* which guarantees that no state shall deprive any person of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation. The *Constitution of Florida, in Section 12 of its Declaration of Rights*, specifically sets forth that private property shall not be taken without just compensation. The court, in its opinion, wholly ignored the rights of the petitioners, and, as heretofore set forth, wholly failed to consider the equities involved.

The Court proceeded on the theory that:

(1) The subject property was abandoned by expressed statement of the original owner, the United States Government;

(2) That the petitioners were in actual possession of this abandoned property.

Then it necessarily follows:

(1) That lawful divestation of the petitioners' rights so established must be by due process of law; and,

(2) That there was no due process of law; and,

(3) That there was no just compensation.

The maritime and civil law as administered by the Admiralty Court in England was not a part of the common law of England, nor was it adopted by *Florida Statutes 1955, Section 2.01.* The Federal Government, not the State, would be the proper sovereign to adopt the King's Prerogative with respect to droits in Admiralty, and this it has chosen not to do. In any event, for the State of Florida to assume, in 1956, the prerogative of the Crown as to droits of Admiralty, seems as inconsistent with the institutions and customs of this state as would hereditary succession to the Governor's chair.

There is no special mystery about the hulk of the "MASSACHUSETTS" lying off shore. The fact that it

was abandoned is unchallenged. The fact that it was reduced to possession by the petitioners is also unchallenged. The applicable law is the universal rule with respect to abandoned personal property.

CONCLUSION.

It is respectfully submitted that the writ should be granted for if this decision stands, generally accepted personal property and maritime law relating to abandoned wrecked vessels and other personal property lying in navigable waters will be overturned and the petitioners will be deprived of property which is rightfully theirs without just compensation or due process of law.

Respectfully submitted,

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CERTIFICATE.

This is to certify that copies of this brief have been served on opposing counsel on this, the .... day of September, 1957.

.....

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Supreme Court of the United States

OCTOBER TERM, 1957

No. 448

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, M. B. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Petitioners,

versus

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND FOR SUPPLEMENTAL RELIEF.

BRIEF FOR RESPONDENTS IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

NO.——

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, M. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Petitioners,

vs.

THE STATE OF FLORIDA, by and through, RICHARD W. ERVIN, as Attorney General of the State of Florida, et. al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI AND SUPPLEMENTAL RELIEF

BRIEF FOR RESPONDENTS IN OPPOSITION

JURISDICTION

Petitioners' brief sets forth the appropriate rule and statute pertaining to jurisdiction of this court. However, for reasons appearing in the argument to follow, this court is without jurisdiction.

QUESTION PRESENTED

Whether the Court has jurisdiction to hear this cause.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Florida Constitution provides:

> "State boundaries.—The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; then southeastwardly along the coast to the edge of the Gulf Stream; thence Southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido river; thence to the place of beginning."

Section 7.17, Florida Statutes reads:

> "Escambia county.—The county of Escambia comprehends all that part of the State of Florida lying to the west and south of a line beginning at the Alabama line where said line crosses the Escambia river; running thence down the thread of said river to Escambia bay; thence along said bay to Deer point, at the intersection of Santa Rosa sound with said bay; thence up said Santa Rosa sound to the range line dividing ranges twenty five and twenty six west; thence south

erly along said range line to the waters of the Gulf of Mexico; provided, that Escambia county shall have jurisdiction of offenses committed on the waters of the Gulf of Mexico adjacent to the shores of Santa Rosa island which lie to the west of a prolongation of said range line separating ranges twenty-five and twenty-six west; and that the counties of Escambia, Santa Rosa and Okaloosa shall have concurrent jurisdiction of offenses committed on the waters of Santa Rosa sound."

Section 705.03, Florida Statutes, provides:

"Disposition of proceeds of sale.—The sheriff shall hold the balance of the proceeds of such sale, after paying to the county judge one per cent of the balance for his services and retaining two and one-half per cent of the gross amount of sale for his commission, for the term of one year and a day, unless the same shall be claimed and the said claim or claims established within said period, and after the lapse of said period the sheriff must pay the same over to the commissioner of agriculture, to be by him paid into the state treasury.

Section 716.01, Florida Statutes, reads:

"Declaration of policy.—It is hereby declared to be the policy of the state, while protecting the interests of the owners thereof, to possess all unclaimed and abandoned money and property for the benefit of all the people of the state, and this law shall be liberally construed to accomplish such purpose."

Title 1, Section 3, USCA provides:

"'Vessel' as including all means of water transportation. The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."

STATEMENT OF THE CASE

The State of Florida filed a complaint for injunction in the Circuit Court of Escambia County, Florida, seeking to enjoin the Massachusetts Company, a joint venture, from trespassing upon submerged sovereignty lands of the State of Florida and dismantling or salvaging and removing from its location the derelict and abandoned battleship "Massachusetts" which lies sunken in the Gulf of Mexico off the coast of Escambia County in the territorial waters of the State of Florida. (App. A. of Petition, p. 1). The Petitioner, without obtaining permission from the State of Florida, undertook to salvage and remove the Massachusetts. The State of Florida asserted title to the Massachusetts by virtue of its title to the submerged land. (App. A. of Petition, p. 20).

The Circuit Court denied injunctive relief. The respondents then appealed to the Supreme Court of Florida and on November 16, 1956, the lower court was reversed (App. G. of petition, p. 132) Petitioner filed a petition for rehearing which was granted and on June 12, 1957, the Supreme Court of Florida affirmed its prior decision. (App. M. of petition, p. 167)

ARGUMENT

Lack of Jurisdiction

This court should not take jurisdiction in this cause because:

(1) The case was decided under state law and there was no federal question necessary to a determination of the cause.

(2) The 14th amendment was presented for the first time on petition for rehearing before the Supreme Court of Florida and was not decided by that court.

This cause was decided by the Supreme Court of Florida upon the ground that the Massachusetts was abandoned on sovereignty land of the state of Florida. The Supreme Court of Florida based its decision on the Common Law of England as it existed prior to July 4, 1776. The court by applying the Common Law determined that title to the Massachusetts was in the State of Florida. This was a determination of title to property found on state land, which is governed by state law. This court will respect decisions of the highest tribunal of a state which settle rules of property. *Amis v. Smith, 41 U.S. 303, 16 Pet. 303, 10 L. Ed. 973; Dooley v. Pease, 180 U.S. 126, 45 L. Ed. 457, 21 S.C. 308, affirming 88 F. 446.*

The decision of this cause was based upon state grounds; and even assuming a federal question, its consideration was not necessary to complete determination of the cause. That being the case, this Court will not entertain an appeal if the state ground is adequate. *Radio Station WOW, Inc., v. Johnson, 326 U.S. 120, 89 L. Ed. 2092, 65 S. C. 1475; Lynch v. New York, 293 U.S. 52, 79 L. Ed. 191, 55 S. C. 16.*

Before this Court will take jurisdiction it must be shown that (1) the state court actually decided a federal *question. Herb v. Pitcairn, 324 U.S. 117, 89 L. Ed. 789, 65 S. C. 459; Charleston Federal Sav. & Loan Asso. v. Alderson, 324 U.S. 182, 89 L. Ed. 857, 65 S.C. 624, reh den 324 U.S. 888, 89 L. Ed. 1436, 65 S.C. 863; Copperweld Steel Co. v. Industrial Com., 324 U.S. 780, 89 L. Ed. 1363, 65 S.C.*

1006, and (2) the decision of the federal question was necessary to the state court's determination of the cause. *Black v. Cutter Laboratories, 351 U.S. 292, 100 L. Ed. 1188, 76 S.C. 824; Herb v. Pitcairn, 324 U.S. 117, 89 L. Ed. 789, 65 S.C. 459.*

The first suggestion of the 14th Amendment was made in petition for rehearing before the Supreme Court of Florida. (App. H. of petition, p. 146) Before a petition for certiorari is granted by this court, there must be a showing that the federal question was timely presented in the state court; It is the general rule that a federal question which is raised for the first time in a petition for rehearing in the highest state court is insufficient to grant jurisdiction unless the state court actually entertains the petition and expressly decides the question. *Radio Station WOW v. Johnson, 326 U.S. 120, 89 L. Ed. 2092, 65 S.C. 1475; Herndon v. Georgia, 295 U.S. 441, 79 L. Ed. 1530, 55 S.C. 794, reh den, 296 U.S. 661, 80 L. Ed. 471, 56 S.C. 82; American Surety Co. v. Baldwin, 287 U.S. 156, 77 L. Ed. 231, 53 S.C. 98; Tidal Oil Co. v. Flanagan, 263 U.S. 444, 68 L. Ed. 382, 44 S.C. 197.* The Supreme Court of Florida did not pass upon the alleged constitutional question presented on rehearing (App. M. of petition, p. 167).

REPLY TO QUESTIONS ARGUED BY PETITIONERS

The questions raised by the petitioner will be presented in the order in which they appear in petitioner's brief.

(1) The Submerged Lands Act of 1953 was directly before the court in *State of Alabama v. Texas, 347 U.S. 272, 98 L. Ed. 689, 74 S.C. 481.* In that case the court quoted

from *United States v. San Francisco, 310 U.S. 16, 29, 30, 84 L. Ed. 1050, 1059, 1060, 60 S.C. 749:*

> "Article 4, §3, Cl. 2 of the Constitution provides that 'The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States.' The power over the public land thus entrusted to Congress is without limitations. 'And it is not for the courts to say how that trust shall be administered. That is for Congress to determine.'"

By this language the court decided the constitutionality of the Submerged Lands Act of 1953.

There is no conflict between the above case and *United States v. California, 332 U.S. 19, 91 L.Ed. 1889, 67 S.C. 1658.* The latter case was decided in 1946, prior to the enactment of the Submerged Lands Act, and even in that case the court recognized the congressional power to make rules and regulations respecting property belonging to the United States, and stated that neither the courts nor the executive agencies could proceed contrary to an Act of Congress in this area.

(2) The Submerged Lands Act of 1953 settled the question of title to the submerged land in which the derelict and wrecked Massachusetts is imbedded. The constitutionality of this act was settled in *State of Alabama v. Texas, 347 U.S. 272, 98 L.Ed. 689, 74 S.C. 481,* and by virtue of the act, the State of Florida clearly has title to the submerged land, leaving only for determination by the state court the question of title to the derelict. This is essentially a question to be determined by the state court.

(3) The determination of the law of Florida is for the highest court of the state. The Supreme Court of Florida, after thoroughly reviewing this cause, has made its determination.

All of the cases cited by the petitioner in support of this contention were decided prior to the Submerged Lands Act of 1953. There is no question of who has title to the submerged bottom land. There is no constitutional violation of petitioner's rights.

(4) The wrecked and derelict Massachusetts is not a vessel subject to admiralty jurisdiction and maritime law. The trial court found that " . . . the sunken battleship is in such condition it could not be restored to use as a vessel." (App. A. of the petition, p. 25)

The derelict has no relation to commerce or navigation. It is "a dead ship" within the purview of *New Bedford Dry Dock Company v. Purdy*, 258 U.S. 96, 66 L.Ed. 482, 42 S.C. 243, 244, where the court quoted with approval from *U.S. v. The Grace Meade*, Fed. Cas. No. 15,243, as follows:

> "And, generally, it may be held as a principle, that, where the keel, stem, and stern posts and ribs of an old vessel, without being broken up and forming an intact frame, are built upon as a skeleton, the case is one of and old vessel rebuilt, and not of a new vessel. Indeed, without regard to the particular parts reused, if any considerable part of the hull and skeleton of an old vessel in its intact condition, without being broken up, is built upon the law holds that in such a case it is the old vessel rebuilt, and not a new vessel."

See also *Campbell v. Loznicka* (CCA 5, 1950), 181 F.2d

356, and *Hercules Co., Inc. v. Brigadier General Absolom Baird, 214 F.2d 66.*

In *Hitner Sons Co. v. U.S., 13 Court of Customs Appeals 216*, the court, at page 221, made this very pertinent observation when considering whether or not a ship was a "vessel" within the meaning of Title 1, Section 3, U.S.C.A., viz:

> "It was not used, nor could it be used, in any way, in commerce or navigation, either in itself or in conjunction with other agencies of such commerce or navigation. It was absolutely useless as a means of transportation of persons or property on water and had no possible availability except such use as might be made of the materials of which it was composed, and such fixtures and appliances as might be attached to it."

In this connection *Kilb v. Menke (CCA 5) 121 F. 2d 1013* states that admiralty jurisdiction does not extend ". . . over hulks, or vessels that have been permanently taken out of . . . use." (Page 1014)

Peele v. Merchants Ins. Co., 19 Fed. Cas. 98,104, holds a ship becomes a "wreck" when as a consequence of damage, she is rendered absolutely innavigable or unable to pursue her voyage without repairs exceeding half her value.

The wreck is scrap within the meaning of *Hitner Sons Company v. U.S., supra.* It is obvious that there can be no possible conflict between the maritime law or Federal Constitution, and the controlling Florida statutes. There is no question but that the wreck or derelict lies within the territorial boundaries of the State of Florida and Escambia County. (Article I, Florida Constitution; Sec-

tion 7.17, Florida Statutes, "Submerged Lands Act of 1953", 43 U.S.C.A. 1301, et seq.)

The State's ownership of the lands upon which the wreck or derelict lies and its jurisdiction over such lands, clearly render maritime and federal law inapplicable.

(5) This question has been discussed above.

(6) The Fifth Amendment is a limitation upon the federal government and has no reference to state actions. *Ex parte Whistler, D.C. Wis. (1945), 65 F. Supp. 40, appeal dismissed 154 F. 2d. 500, cert. den. 327 U.S. 797, 90 L.Ed. 1023, 66 S.C. 822, rehearing den. 327 U.S. 819, 90 L. Ed. 1041, 66 S.C. 959.*

Conclusion

The petitioner can show no reason why the Court under applicable decisions should grant writ of certiorari to review this case decided by the Supreme Court of Florida upon the appropriate state law.

Respectfully submitted,

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AFFIDAVIT OF SERVICE

STATE OF FLORIDA)
)
COUNTY OF ESCAMBIA)

Before the undersigned authority this day personally appeared Ralph M. McLane, who after being first duly sworn, on oath deposes and says: that he is an Assistant Attorney General of the State of Florida and of counsel for the respondents in this cause. That he did on the ..... day of November, 1957, deposit a copy of the foregoing brief in a United States mail box, with first class postage prepaid and addressed to J. McHenry Jones, Counsel of Record for Petitioner, 706 Florida National Bank Building, Pensacola, Florida.

.....

Sworn to and subscribed
before me this ..... day
of November, 1957.

.....
Notary Public
My Commission expires